S. HRG. 100-190

ODS LINER REFORM AND FOREIGN SHIPPING PRACTICES ACT OF 1987

HEARINGS

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1183

TO AMEND THE SHIPPING ACT OF 1984 REGARDING CERTAIN PRACTICES OF FOREIGN CARRIERS OR OTHER PERSONS PROVIDING MARITIME OR MARITIME-RELATED SERVICES IN FOREIGN COUNTRIES, AND FOR OTHER PURPOSES

MAY 20 AND 21, 1987

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ODS LINER REFORM

WEDNESDAY, MAY 20, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in Room SR–253, Russell Senate Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Staff members assigned to these hearings: John Hardy, staff counsel and Brad Gilman, minority professional staff member.

OPENING STATEMENT BY SENATOR BREAUX

Senator BREAUX. Good morning.

The subcommittee will please come to order.

Today and tomorrow, our subcommittee will consider S. 1183, a bill intended to make our Merchant Marine more competitive in international liner shipping.

It attempts to address what I believe to be the two major barriers to this objective: first, the laws and practices of many, but not all, of our trading partners and their national flag vessels; second, the reluctance of our own government to give the industry the level of support necessary to insure that it has what every other country tries to give its national flags, a competitive edge in international ocean shipping trades.

It is naive in the extreme, in my judgment, to believe that the reason that U.S. vessels only carry 20 percent of our international liner trade is simply because they are "outhustled" by the competition.

This morning's hearing is directed to Title II of S. 1183, which is intended to address the second obstacle, the failure of our government to provide the necessary level of support to the industry, specifically the operating differential subsidy program, that would be adequate to enable our liner fleet to compete effectively.

Today, it is carrying about 20 percent of the cargo which moves in our liner trades, and that amount is woefully short of the substantial portion which the Merchant Marine Act of 1936 specifically states is the objective of our National Maritime Policy.

Not only are we carrying a woefully meager amount of our liner cargo, our liner fleet has shrunk from 20 companies in 1970 to six companies today.

Within this past year, we have seen two companies go into bankruptcy.

Again, it would be totally unrealistic, in my judgment, to conclude that this alarming circumstance is purely the result of a free market at work. We know that over 40 maritime countries render substantial assistance to their national flags.

I find it particularly puzzling for the administration to say that it wants our Merchant Marine to be more competitive, but that it will not expand ODS, even though the cost of wage differential is increasing because U.S.-flag competitors are employing seafarers from low wage countries and wage differential makes up about 90 percent of our ODS payments.

Furthermore, I am also concerned about the apparent inconsistency between the Navy's policy on the one hand, to spend hundreds of millions of dollars to acquire and maintain a substantial ready reserve fleet—or RRF—in order to provide the necessary sealift capacity in times of crisis, and the policy of the Department of Transportation and OMB, on the other hand, to oppose the alternative of providing full support for a healthy U.S.-flag liner fleet and for our state maritime academies to train the skilled American seamen.

It seems to me that if we are willing to accept that the policy of the United States is to maintain a sealift capacity based on our national security interests, we should equally accept the fact that we are going to have to pay for it one way or the other.

The fundamental question in my view is what is the most cost-effective program.

Personally, I have some serious questions about the comparative costs of the Navy RRF program vis-a-vis the cost of ODS reform, as proposed in my legislation. I would like to see someone give me straight answers on this as I think this is the most basic question that we are faced with.

I also have some questions about the ability of the Navy to even man the RRF if that becomes our chosen policy and if we ever need that fleet.

I would also like to say a word about the state of our shipyards, our shipyard mobilization base.

Although Title II, as introduced, does not address the problem, the subcommittee of course is very concerned, as witnessed by the presence of the Shipbuilders Council today and tomorrow.

In 1985, one year after the Navy Shipyard Mobilization Base Study concluded that the then 119 shipyards in the mobilization base were more than adequate to meet the estimated DOD mobilization requirements and that the 160,000 productive workers provided a marginally adequate workforce, the Secretary of Defense said, "The Navy's current and planned shipbuilding and repair programs are, by themselves, insufficient to support the Nation's present shipyards at an efficient level of production. Clearly, what is needed is a revitalization of the commercial segment of the maritime industry."

Today, there are 102 shipyards in the mobilization base, and 93 of them are privately owned. Of that 93, 22 are considered shipbuilding yards.

There are seven vessels on the commercial order books at four of these 22 yards for construction of vessels of 1,000 gross tons or more, and none of those vessels are for international trades.

As of April 1 of this year, there were 83 Naval vessels of 1,000 light tons or more under construction in 15 private yards, and six vessels of that tonnage are undergoing modernization and/or conversion in four private yards. In addition, I understand there is a substantial workload representing smaller Navy and other DOD vessels distributed among smaller shipyards nation-wide.

This is not a reassuring picture. The subcommittee intends to address the problem.

Given the complexity of the problem and the time constraints on reporting S. 1183, it may not be possible to include a solution in this legislation.

This morning, the committee expects to hear how the administration and the industry view the problems facing our Merchant Marine and whether they feel Title II is possibly part of a realistic solution.

I wish again to emphasize that nothing in Title II is set in concrete, except its objective.

I will also add that I do not come to this with a naive approach to the problem. It has been around certainly as long as I have been in Congress, and for many, many years before that.

It seems like every year there is a new, renewed effort, or at least in every Congress, to try to address the problem of the Merchant Marine. I take this approach very seriously. This is a starting point. The proposed legislation is not written in concrete. It is a proposal.

The purpose of the hearing is to receive testimony on it. Those who have agonized over the bill, as introduced, should not worry. Those who have embraced it perhaps should worry.

What I am saying is that this is not a final product. It is merely a beginning point so that we may all try to work together to come up with a final package that makes sense and that we can say we, at least in this Congress, made a serious effort that resulted in some substantial improvements over the current situation.

It is past the time when we can continue just to talk about it. I think we have to have something on the books that makes some significant approaches toward solving the problem in this Congress.

We have some opening statements which we will file for the record from Senators Inouye and Adams, which will be made a part of our record.

OPENING STATEMENT BY SENATOR INOUYE

I wish to congratulate my distinguished Chairman, and assure him of my support and cooperation. As the former Chairman of the Subcommittee, I know how formidable the task before him is. In the past few years everyone familiar with the perilous state our merchant marine has been sounding the alarm, but so far the solutions to its problems have eluded us. the bankruptcies of U.S. Lines and Prudential within the last year should, however, convince everyone that the our merchant marine is "living on borrowed time", and we have already begun "to pay the bill."

We have gone from the world's foremost maritime power to one that even now may not be adequate to meet our needs in time of war or other national emergency; and certainly is not carrying a "substantial portion" of our international waterborne commerce, unless, of course, one considers less than 5% a substantial portion."

So I am encouraged by my Chairman's efforts to revitalize and strengthen our liner fleet. I am especially pleased that he has said it would be ironic if legislation intended for that purpose, actually caused the demise of any segment of that fleet; and that no provision of S. 1183 is set in concrete.

In that spirit, I shall therefore be studying the hearing record closely to ensure that Title II of S. 1183:

Will provide all of our international liner companies—large and small— an opportunity to become strong.

Does not jeopardize our Jones Act fleet.

I realize there are certain provisions in Title II which will only benefit some of our liner operators; but the legislation must not stop at that. In my view, Title II must be considered as a package, otherwise we will benefit some segments of the fleet and severely, if not fatally damage, others. In that event, we will have weakened not strengthened our Merchant Marine.

S. 1183 is an excellent beginning, in my view, and with the industry's support and cooperation, I believe the Committee can make whatever adjustments are necessary for it to accomplish its vital purpose.

OPENING STATEMENT BY SENATOR ADAMS

Mr. Chairman, I congratulate you for holding these hearings and for introducing the bill which we are considering today.

I am encouraged that this bill addresses some of the very serious problems of the maritime industry—an industry which is critical to my state, where international trade is a key to economic growth. I am also encouraged by Senator Breaux's commitment to a level playing field for our international carriers.

While Senator Breaux's bill addresses a number of critical issues, I believe that as we develop this legislation we will need to pay more attention to a critical element in our maritime strategy: the Jones Act carriers. These carriers have built their vessels in U.S. yards, operated them with U.S. crews, and have done so without benefit of a single dollar of subsidy. The Congress must not allow international carriers to use subsidy dollars to compete with the unsubsidized carriers which provide essential service to Alaska, Hawaii and Puerto Rico.

This is an important issue for some of my constituents and for all of the exclusively domestic carriers. We must assure that federal tax dollars are limited to the international trades, and do not give an unfair advantage to those carriers which operate in both the international and domestic trades.

Section 805(a) of the Merchant Marine Act of 1936 attempts to provide these assurances. It requires a hearing before a subsidized carrier can enter a domestic trade, and it requires MARAD to determine that the entry of the subsidized carrier would not constitute unfair competition or be contrary to the objects and policy of the Act. Recent decisions of MARAD and the Secretary of Transportation, however, have reduced the effectiveness of these safeguards.

It is time to strengthen and preserve Section 805(a) in order to preserve the level playing field for our Jones Act carriers, as well as our international liner services. MARAD should consider the practical advantages, if any, which an assured federal subsidy gives a carrier when competing against the unsubsidized Jones Act carriers. In addition, MARAD needs to consider carefully the effects of overtonnaging which could occur if subsidized carriers are allowed to enter domestic markets which are already depressed and overtonnaged.

I am afraid that our efforts to assist the international carriers may inadvertently jeopardize the investments the Jones Act carriers have made and threaten the essential services they provide, particularly to Alaska, Hawaii and Puerto Rico. I will work with the Chairman and other members of the Committee to make sure that does not happen.

II

100TH CONGRESS
1ST SESSION

S. 1183

To amend the Shipping Act of 1984 regarding certain practices of foreign carriers or other persons providing maritime or maritime-related services in foreign countries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12 (legislative day, MAY 8), 1987

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend the Shipping Act of 1984 regarding certain practices of foreign carriers or other persons providing maritime or maritime-related services in foreign countries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FOREIGN SHIPPING PRACTICES

SEC. 101. This title may be cited as the "Foreign Shipping Practices Act of 1987".

SEC. 102. (a) The Shipping Act of 1984 (Public Law 98–237; 98 Stat. 67) is amended by adding at the end the following:

"SEC. 23. FOREIGN LAWS AND PRACTICES.

"(a) DEFINITIONS.—For purposes of this section—

"(1) 'foreign carrier' means an ocean common carrier whose vessels are documented under the laws of a country other than the United States;

"(2) 'maritime services' means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

"(3) 'maritime-related services' means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

"(4) 'United States carrier' means an ocean common carrier which operates vessels documented under the laws of the United States; and

"(5) 'United States oceanborne trade' means the carriage of cargo between the United States and a foreign country by ocean common carriers.

"(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—The Commission shall investigate any and all laws, rules, regulations, policies and practices of foreign governments and any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country which result in the existence of conditions for United States carriers in United States oceanborne trades that do not exist for foreign carriers under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

"(c) INITIATION OF INVESTIGATIONS.—Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or upon the petition of any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

"(d) ORDERS.—In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission. Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any such response shall not be disclosed to the public.

"(e) ACTION AGAINST FOREIGN CARRIERS.—Whenever the conditions specified in subsection (b) of this section exist, the Commission shall take any action that it considers necessary and appropriate against foreign carriers who are contributing causes to, or whose country is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

"(1) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

"(2) suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for any period that the Commission specifies;

"(3) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other common carriers; and

"(4) imposition of licensing, domestic nationality, or other requirements upon such foreign carriers similar to those imposed upon United States carriers.

"(f) ACTIONS UPON REQUEST OF THE COMMISSION.—Whenever the conditions specified in subsection (b) of this section exist, upon the request of the Commission—

"(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

"(2) the Secretary of the department in which the Coast Guard is operating shall deny entry of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

"(g) REPORT.—The Commission shall include in its annual report to Congress—

"(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for that year in bilateral trade with the United States;

"(2) an analysis of conditions described in subsection (b) of this section being investigated or existing in such foreign countries;

"(3) any actions being taken by the Commission to offset such conditions; and

"(4) any recommendations for additional legislation to offset such conditions.

"(h) APPLICABILITY.—Notwithstanding any other provision of law, the actions of the Commission under this section shall be final and shall not be subject to judicial review.".

(b) The table of contents of the Shipping Act of 1984 is amended by adding at the end the following:

"Sec. 23. Foreign laws and practices.".

TITLE II—AMENDMENTS TO THE MERCHANT MARINE ACT, 1936

SEC. 201. The second sentence of section 601(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171(a)) is amended by inserting immediately before the period the following: ", or the operation of a liner vessel in international trade".

SEC. 202. Section 602 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1172) is amended by striking "a vessel" and inserting in lieu thereof "a bulk vessel".

SEC. 203. Subsection (a) of section 603 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1173) is amended to read as follows:

"(a) Upon making the determinations specified in sections 601(a), 605(c) and where applicable, 602 of this title with regard to an application, the Secretary of Transportation shall approve the application and enter into a contract or amendment to a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section for the operation of such vessel or vessels in an essential service and in cruises authorized under section 613 of this title. Such contract or amendment to a contract shall be subject to such reasonable terms and conditions, consistent with the Act, as the Secretary of Transportation shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation. Any such contract shall be for a period not exceeding twenty years.".

SEC. 204. Section 606 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1176) is amended by adding at the end the following: "In addition, every contract for an operating-

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differential subsidy for liner vessels under this title shall provide that the contractor is not subject to any restriction or limitation upon the performance of unsubsidized services in international trade with vessels documented under the laws of the United States.".

SEC. 205. Section 615 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1185) is amended to read as follows:

"SEC. 615. Any liner vessel built or rebuilt in a foreign shipyard and documented under the laws of the United States shall be deemed to have been United States-built for purposes of sections 601(a) and 610(1) of this title.".

SEC. 206. Section 901(b)(1) of the Merchant Marine Act, 1936 (46 App U.S.C. 1241(b)(1)) is amended—

(1) by striking ", or (2)" and inserting in lieu thereof ", (2)"; and

(2) by striking the period at the end and inserting in lieu thereof the following: ", or (3) a vessel is a liner vessel documented under the laws of the United States.".

SEC. 207. Section 905 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1244) is amended by adding at the end the following:

"(h) The term 'international trade' means foreign commerce, and commerce between two or more foreign countries.

"(i) The term 'liner vessel' means a vessel operated by a common carrier on a definite, advertised schedule, giving relatively frequent sailings at regular intervals carrying cargo in international trade.".

○

Senator **Breaux**. So with that, we would like to welcome our first witness, Hon. John Gaughan, Administrator, Department of Transportation, for the Maritime Administration.

John, we welcome you. You are accompanied by your colleagues. If you would like to introduce them, we would be pleased to have all of you here, and we look forward to your testimony.

STATEMENT OF HON. JOHN A. GAUGHAN, ADMINISTRATOR, MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ELAINE CHAO, DEPUTY MARITIME ADMINISTRATOR; RICHARD BOWMAN, ASSOCIATE ADMINISTRATOR FOR MARITIME AIDS; AND ROBERT PATTON, DEPUTY CHIEF COUNSEL

Mr. **Gaughan**. Thank you very much, Mr. Chairman.

Mr. Chairman, I am accompanied today by Ms. Elaine Chao, the Deputy Administrator; Mr. Robert Patton, the Deputy Chief Counsel; and Mr. Richard Bowman, the Associate Administrator.

Mr. Chairman, it is a pleasure for me to be here today to present the views of the Administration on the proposed amendments to the Merchant Marine Act of 1936, set forth in Title II of S. 1183.

First, I would like to share the Administration's views on the ODS program and its effectiveness in promoting a strong Merchant Marine.

In the Merchant Marine Act, 1936, Congress recognized that the Federal Government had to provide a means of offsetting the higher costs of U.S. operators in order to foster a U.S. maritime industry capable of competing with foreign flag operators.

Congress sought to promote a civilian Merchant Marine that could be relied on in periods of national emergency and armed conflict.

Since passage of the act, however, the nature of the U.S. industry and the foreign competition it faces have changed dramatically. Today, the act's programs do not provide sufficient operating flexibility in a rapidly changing market and lack adequate incentives to foster efficiency.

It is increasingly clear that the downward trend in the number of ships in the U.S. flag merchant fleet is likely to continue, thereby diminishing the fleet's ability to meet its responsibilities in support of national security and U.S. commerce.

It is equally clear that the lack of ODS reform could well exacerbate this problem.

The U.S. carriers' cost structure has made it more and more difficult for them to compete internationally, and the U.S. flag share of carriage of our trade, on a tonnage basis, has declined steadily. The number of ships in the fleet has shrunk dramatically due to a number of factors, including technological change. This decline is expected to continue at an even more rapid rate in the years ahead.

The United States can no longer afford a program with statutory restrictions that do not provide for effective cost controls, and restrict the flexibility of U.S. flag operators to compete with foreign carriers.

Our task is to help enable the U.S. flag fleet to prosper in today's market. Any promotional policy must address these areas.

Mr. Chairman, we, like you, are mindful of the work of the Bennett Commission, as well as legislative proposals designed to revitalize the U.S. merchant fleet. You are to be commended in that the amendments to the Merchant Marine Act that you have proposed address a number of the problem areas that have plagued the U.S. fleet.

For example, in your bill, the Administration supports the following initiatives:

First, the authority for U.S. flag operators to construct or acquire modern, efficient vessels at world market prices. This is essential to modernize tonnage in the private U.S. flag fleet and increase sealift capacity for the defense of the nation. Low-cost, fuel-efficient ships will allow U.S. flag operators to compete more effectively in the foreign trades.

Second is immediate eligibility of foreign constructed U.S. flag liner vessels to transport reserved cargoes under the cargo preference laws.

Third is increased operating flexibility to respond effectively to market conditions.

Mr. Chairman, we would be willing to consider any reasonable initiative that would help make U.S. carriers more competitive in the world market. We believe that any promotional initiative must provide incentives to achieve cost efficiencies in the U.S. flag fleet and maximize the effectiveness of the government's investment.

We believe, however, that S. 1183 does not provide for all the reforms that must be undertaken to achieve those goals and revitalize the U.S. liner fleet.

In addition to the provisions for which I have indicated administration support, we believe the bill should also address other matters, such as the form of government support, as well as the cost structure of the U.S. flag industry that has contributed to its inability to compete effectively in the world market.

For example:

In the area of crew wages, the bill should provide incentives that will generate reductions in the levels and costs of subsidized manning. We believe that such reductions are crucial to the U.S. flag fleet's ability to compete in international trade now and in the future.

The bill should also reexamine the appropriateness of subsidizing non-wage cost items. Since ODS for wages represents 85 percent to 90 percent of ODS currently paid, are ODS expenditures for non-wage items really necessary, particularly as the U.S. flag carriers take advantage of worldwide ship acquisition authority and modernize their fleet.

Since the bill provides for the entry of new liner operators under the program, the general level of subsidized operations that would be permitted should also be addressed.

There must be a reasonable cap placed on the level of subsidized operations for each operator so that Federal expenditures under the expanded program are fiscally responsible. We simply cannot accept legislation that would make ODS an entitlement, as S. 1183 appears to do.

Mr. Chairman, I have only touched generally upon major areas of concern. However, I would like to tell you that the Administration is now considering specific proposals for reform of the promotional program for the U.S. flag liner industry in the key areas I have already discussed, and in other areas as well.

Overall, these proposals should provide a meaningful program that will foster a strong U.S. flag fleet in international trade.

Mr. Chairman, that concludes my prepared statement, and I will be pleased to answer any questions that you or members of the subcommittee may have.

I know that we have a common purpose in this endeavor, and I look forward to working with you and representatives of all segments of the industry toward meaningful reform for the U.S. flag Merchant Marine industry.

Thank you.

Senator BREAUX. Thank you very much, Mr. Gaughan, for your statement and for your willingness to work with this committee to try to come up with some proposals.

Is the concept of allowing all of our ships to come in and receive ODS assistance from our government a good idea if you do away with the cost factor right now, which obviously has to be a major consideration? Can we afford it?

Doing away with the question of can we afford it, which we will get into, is the idea of letting them all come in and qualify a good idea or not? If it is, could you tell us why or why not?

Mr. GAUGHAN. Mr. Chairman, I believe that it is a good idea. The reasons behind that answer stem very clearly from the national security and defense requirements of this country.

The cost structure that U.S. carriers are faced with—and they are not necessarily of their own doing—make it very difficult for them to compete effectively.

I think there is a legitimate role for the Federal Government to provide the necessary supports to insure that there is an active working fleet to carry our commercial cargo, but also to be available in a national emergency.

The working fleet provides the base for the manpower that you need to man not only the working fleet, but the fleet of the NDRF and the RRF.

Senator BREAUX. Some of our lines are subsidized and some are not, of course.

Can you give some discussion to the committee with regard to the fairness aspect of allowing them all to come in now and become a subsidized operator, how it would affect perhaps trade routes now that are not allowed for ODS operators to come into?

Really, what you are doing is opening it all up with this proposal. I am wondering if you could address the question of fairness in this regard.

Mr. **Gaughan**. Mr. Chairman, as I have looked at this situation, it becomes clear, at least to me, that it is absolutely necessary to put all operators who wish to participate in the starting gate at the same time, if you will.

This is much easier said than done, because you do have to account for what I would call a transition period, to allow existing operators to adjust their type of service, their agreements with their unions, and so forth. At the same time, you do not want to unduly constrain an operator who has not been on the subsidy system but who has had great flexibility.

I don't mean to be long-winded, but I think the challenge is to address what I would call the transition period and try to balance the various equities there, so that at some point in the not too distant future, we are talking two or three years, everyone is playing by the same rules, or has the opportunity to make that choice.

Senator **Breaux**. How would the legislation that we have before the committee affect the existing trade route concept, if at all?

Mr. **Gaughan**. In my reading of the bill, Mr. Chairman, it would eliminate the essential trade route concept and open it up to allow carriers to trade anywhere in the world.

Senator **Breaux**. Let's get some discussion on the cost factors, which we have excluded so far.

Every time we have considered this, the administration, regardless of which administration it was, has always come in and said oh, my god, we can't afford it.

Getting into this issue, I find that we apparently are spending an incredible amount of money with the Navy to try to build up a ready reserve fleet.

The purpose of that ready reserve fleet, they tell me, is to provide the sealift capacity for the Navy in a time of emergency, for transporting things that need to be moved around the world.

The argument on the other hand is that some kind of attention to our own commercial Merchant Marine fleet, having it viable and active, would provide the same fleet, and, in addition, it would provide that fleet with the capability of being manned by men and women who are seamen, who can operate those ships. You would not have a vacuum as far as manpower is concerned.

Can you give this committee an estimate of how much perhaps we are spending as a nation, through the Department of Defense, I would imagine, to build up a ready reserve fleet?

Mr. **Gaughan**. Mr. Chairman, I can provide specific numbers for the record. But from the inception of the program, we are talking about roughly $6 million in fiscal year 1977 to pay for maintenance costs on the upgrading of the vessels coming out of the NDRF to a ready state. In fiscal year 1987, that number, for maintenance and all, had grown to $72 million—that is on an annual basis—plus $77 million additional to acquire additional tonnage, and $13 million for sealift enhancement features.

So that is $162 million.

In fiscal year 1986, the number was almost $300 million. This was due to a very large blip, if you will, in the money made available for acquiring new vessels, which was some $216 million.

[The following information was subsequently received for the record:]

SUMMARY OF NAVY RRF FUNDING THROUGH CURRENT FISCAL YEAR, MAY 26, 1987

[In millions of dollars]

	O M-N (upkeep and maintenance)	SCN funding (acquisition)	Other Navy funding [1]	T-ACS conversion	Total
Fiscal year:					
1977	$6.1	0	0	0	$6.1
1978	7.7	0	0	0	7.7
1979	9.4	0	0	0	9.4
1980	9.2	0	0	0	9.2
1981	10.4	0	$0.7	0	11.1
1982	10.6	0	3.5	$25.1	39.2
1983	19	0	1.5	0	20.5
1984	34.5	$30.4	11.7	22.8	99.4
1985	59.1	85.8	33.5	26.3	204.7
1986	69.7	217	12.5	63.9	363.1
1987	72.8	77.8	13.1	48.9	212.6
Total	308.5	411	76.5	187	983

[1] Sealift enhancement features, electronics and communications upgrading, offshore petroleum discharge system.

Senator Breaux. As you understand it, what is the goal? I guess this program is operated through the Department of Transportation at the present time.

Mr. Gaughan. That is correct.

Senator Breaux. What is the goal of the ready reserve fleet in terms of vessels?

Do you have an idea?

Mr. Gaughan. The projected goal from the Department of Defense is 120 or 122 ships.

Senator Breaux. And average cost of acquisition has been running so far at about what?

Mr. Gaughan. At $15 million a vessel, in the most recent acquisition.

Senator Breaux. So, at $15 million per ship, and it is 120 ships?

Mr. Gaughan. It's 122. Right now, there are 82 to 84 ships that are designated RRF vessels.

Senator Breaux. From a policy standpoint, what is the purpose of this fleet?

Mr. Gaughan. Mr. Chairman, the purpose of this fleet is to provide a quick surge mobilization capability for the Department of Defense to resupply defense interests wherever a national emergency might arise.

The original rationale—and I hope that the rational—I shouldn't say "I hope"—the rationale that is still stated by the Department of Defense is that the RRF and the acquisition of vessels was intended to fill the gap between the traditional breakbulk vessel with ships that had greater military utility than the new, modern container ship that does not come with self-sustaining equipment, such as cranes and so forth.

The acquisition, the makeup, the projected makeup of the reserve force would have some—and I will provide the precise number for the record—some 67 or so breakbulk vessels, a number of ro-ro's, or roll-on-roll-off, lash vessels and tankers. These are all viewed as essential for meeting the particular and unique needs of the Department of Defense. They are not viewed as commercial vessels or commercially viable vessels at this time.

But, as the size of the fleet gets larger, that representation could change, sir.

[The following information was subsequently received for the record:]

RRF PLANNING GOAL

[Cumulative, by fiscal year end]

Ship type	Fiscal year—						
	1986	1987	1988	1989	1990	1991	1992
Dry cargo:							
Heavy lift	4	5	7	9	9	9	9
Ro/ro	17	17	17	17	17	17	17
Container (TACS)	3	6	8	10	12	12	12
Breakbulk	51	53	57	58	59	62	62
Tankers	8	12	12	14	15	16	20
Total (cumulative)	83	93	101	108	112	116	120

Source: Navy (OP-42) POM-38, dated May 1986, p. 35.

Senator **Breaux**. Is there any prohibition on bringing those ready reserve fleet vessels under the commercial trade?

Mr. **Gaughan**. Yes, sir.

They are prohibited from carrying commercial cargo.

They are used at the present time in no-notice breakouts, in support of military exercises, and that goes on.

An example would be if you had a military exercise in Korea. A ready reserve force ship can be broken out on no notice.

Senator **Breaux**. Where would the manpower come for running those ships?

Mr. **Gaughan**. At the present time, the manpower comes from the existing pool of merchant mariners, through the agents we use, who have relationships with maritime labor and have a requirement to provide crews on the five, or ten or 20 day notice.

Senator **Breaux**. Well, if we are losing all of our crews and Merchant Marine seamen, as the commercial industry continues to get smaller and smaller, is that not going to have a definite, direct effect on the ability to man the ready reserve, if we ever needed it?

Mr. **Gaughan**. Yes, it will, Mr. Chairman.

There is presently underway a study of that problem by the Department of Transportation and the Department of Defense that will look at alternative ways of manning the ready reserve force.

One of the proposals that has been developed—though not yet reviewed or approved—would be the establishment of a civilian Merchant Marine reserve.

The estimate of the cost of that is in the neighborhood of $50 million a year.

Senator Breaux. Can you put a ballpark figure on the cost of the ready reserve fleet?

Mr. Gaughan. It probably runs on an annual basis, and projecting it out, in the neighborhood of $125 million a year.

I can provide—I will have to get it from the Department of Defense—a five year planning document which they have that would have what their projected costs would be, out to, I guess, the year 1992.

[The following information was subsequently received for the record:]

SUMMARY OF PLANNED NAVY RRF FUNDING FISCAL YEARS 1988 THROUGH 1992

[In millions of dollars]

	0 M-N funds (upkeep and Maintenance) [1]	SCN funds (acquistion) [1]	Other Navy funding [2]	T-ACS conversion [3]	Total
Fiscal year:					
1988	96.3	42.3	N/A	75.2	195.8
1989	104.1	49.1	N/A	58.4	211.6
1990	125	76.4	N/A	8.1	209.5
1991	170.7	26.6	N/A	6.2	203.5
1992	162.1	50	N/A	6.2	218.3
Total	658.2	244.4	N/A	136.1	1,038.7

[1] Navy OP-42 program objective (POM)-88, dated May 1986, page 37.

[2] Sealift enhancement features, electronics and communications upgrading, offshore petroleum discharge system (OPDS).

[3] Navy (OP-42) POM-88, dated May 1986, page 40.

N/A.—No estimate currently available.

Senator Breaux. What do they have—40 more vessels that need to be acquired to meet that goal, approximately?

Mr. Gaughan. Yes. That is approximately correct, sir.

Senator Breaux. Well, if it is $15 million a vessel, that is $600 million right there, isn't it?

Mr. Gaughan. Yes, it is.

In fairness, Mr. Chairman, I should point out that I believe that the Defense Department looks at what is available in the marketplace and would not necessarily feel bound to buy those ships if their sense is that the market is at a high point. They would probably wait to try to acquire the ships at the best available price.

But, suffice it to say, in the last buy that went through, the average cost was $15 million a vessel.

Senator Breaux. All right.

Give the committee, if you would, a comparison between the costs that we have just discussed, that are needed to maintain a ready reserve fleet, versus the costs that would be estimated to bring in all of our companies under some type of ODS type of program.

Well, let me ask you the question first and then we can get to the cost factor.

The first question is this. Were we able to have a healthy U.S. Merchant Marine commercial industry, would that not be a way of solving the ready reserve fleet? That seems to have the same purpose.

Mr. Gaughan. Mr. Chairman, I think that certainly a healthy, working commercial fleet would be a step toward relieving the pressure on building up the RRF. But, at the same time, I do think that there are particularly unique vessels that are a part of the ready reserve force that we would probably have in it one way or the other.

Let me just give you one example.

We are presently converting a number of vessels into crane ships. Those vessels are to be available to off-load container equipment and so forth, container boxes, in areas of the world where you do not have a container port and so forth.

Certainly some of the breakbulk vessels will be needed. I believe that until the military is able to meet the challenge of how do you configure their goods to fit into container ships and solve all attendant problems, there would still be a need for some of the breakbulk vessels.

Mr. Chairman, my point is simply that I do not believe that you would see the ready reserve force disappear entirely with a healthy fleet because of the unique type of equipment that you need for defense purposes.

Senator **Breaux**. Can you give us some general discussion, then, on this.

If you look at the cost of the ready reserve fleet and add the fact that we don't have enough seamen to run it, and add to the fact that they are proposing perhaps what you termed a Merchant Marine reserve force, that is going to be, I think, very costly, versus the concept of having all of our ships receive some form of ODS, and having a working crew that is trained and updated and, in fact, working on working ships—can you give some kind of ballpark comparison on the question of costs, as to one versus the other.

Mr. **Gaughan**. Those costs of maintaining the RRF and our current ODS program are going to be roughly comparable.

If not—well, I think I will leave it at roughly comparable, sir. I have not been through it enough to be able to tell you absolutely.

But, clearly, if the costs are the same, but on the one hand you are getting a working ship with a working crew, you are getting a lot more for your money.

Senator **Breaux**. So if we can establish that it is a ballpark, comparable cost, then isn't there somebody sitting down there in OMB who figures dollars, who, if he can be shown that the costs are roughly the same of achieving the purpose of having a fleet that is going to meet the defense needs of this country in time of an emergency, then for him it would become not a cost question, but a policy question, of which way are we going to do it?

We are already spending an incredible amount of money—we have established that—on maintaining a ready reserve fleet without any crews, versus the question of spending that same amount of money with the existing commercial operators that we have in this country.

Has that point ever reached that level of discussion, in the administration, that you are aware of?

Mr. **Gaughan**. Mr. Chairman, I think that that type of discussion has—I cannot speak for other administrations—but that type of discussion has at least started to occur in the Office of Management and Budget at this time.

Senator **Breaux**. We had some discussion about the type of vessels that perhaps the Navy needs for the ready reserve fleet. If we are going to take the position that we are going to take care of the commercial industry and have them on call for national defense needs, is there any way of assuring that the type of vessels that the commercial industry normally would be building would be suitable to meet the Defense Department needs in time of an emergency?

I mean, suppose we have the healthiest Merchant Marine fleet in the world and we have a national emergency. We take the ships and then none of them fit the type of equipment and things that we need to be moving.

Is that a really serious problem, or is it the type of thing that is easily convertible, or the type of equipment the commercial industry moves would be able to take care of the military movement needs?

Mr. **Gaughan**. Certainly, Mr. Chairman, one of the requirements that has to be met, even under the so-called 615 build foreign authority is that the vessels would have military utility.

That is sort of a generic approval.

Senator **Breaux**. We will be asking this question of the operators as well.

Mr. **Gaughan**. The Department of Defense passes on those.

Now in some cases, some of the vessels that are in commercial operation are not going to ideally fit their needs. If a vessel only has a speed of 16 or 17 knots, that would be of concern to military planners because of its slowness.

But that does not discount the fact that it is still available and can, in fact, be configured with flat racks, so-called flat racks, and sea sheds to carry tanks, outsized equipment, and so forth.

Senator **Breaux**. You mentioned in your testimony, Mr. Gaughan, elimination of ODS for non-wage items. You are talking about eliminating it for what—insurance, maintenance costs, those types of costs?

Mr. **Gaughan**. That's correct.

Senator **Breaux**. Is that an effort to get down the costs or to simplify the administration of it?

Mr. **Gaughan**. Well, I think it is a combination of both.

When you look, Mr. Chairman, at the cost structure of a U.S. operator versus a foreign flag operator, every element that is in that cost structure is higher. If the vessel was built in the U.S., it has a higher capital cost structure. If it was built foreign, the U.S. operator's capital costs versus foreign flags are the same.

Wages, though, are higher.

Insurance is higher. And maintenance costs are higher.

Senator **Breaux**. If it is built where?

Mr. **Gaughan**. If it is built either in the U.S. or in a foreign yard—it does not matter—all those cost items appear to be higher. But if you allow the greater flexibilities that come with a reform program, I think the differentials in non-wage items become a minor competitive factor and you can eliminate a number of those items because of the greater benefits that they are getting, such as worldwide ship acquisition authority.

And, there are some operators on ODS right now that are receiving wages only.

Senator **Breaux**. You had mentioned, I think, something about if this approach is done, the consideration of some type of cap would be advisable.

Are you talking about the number of vessels which would be receiving ODS or the number of ODS subsidies per company that they would be eligible to receive? Or would it be a concept of dividing among the operators X-number of ODS contracts?

What will you be speaking of?

Mr. **Gaughan**. I will give you a couple of ideas, Mr. Chairman.

I think there does need to be a concern about the costs involved. If you were to limit the number of ship-years that an operator got, but allowed that operator, no matter how many ships he had, to interchange vessels and so forth, as long as they only got paid up to, say, 20 ship-years per company, if there were extra ship-years around in another company that they were not using and that was made available to be bought by another company or whatever, you could, in fact, put in my opinion some discipline in the cost and yet provide flexibility to operators to meet their own needs and to still get necessary support.

Those are some ideas that I would have.

Senator **Breaux**. Reading the bill that is before the committee, are there any U.S. operators that you think under the bill would not be eligible to participate in the ODS program? I am talking about the major operators, I guess, and not some small, individual line.

Mr. **Gaughan**. Mr. Chairman, I have not studied all of the definitions as closely as maybe I should have if time would have allowed me to.

When I read this, quite frankly, I did not focus on that because I did not view this as an intent to legislate out anybody and that it was an effort, in fact, to open it up to any operator that was out there that was not receiving it. There are a number who have been providing services that presently do not have ODS contracts, but that clearly ought to be considered.

So I am not sure that I answered your question correctly. But if that is the practical consequence, we would be willing to work with you in correcting that. But I don't think that was the intent.

Senator **Breaux**. Do any of your colleagues see any prohibition against anyone coming in and qualifying.

Mr. **Patton**. Well, we understand there is some concern about some of the definitions. But we also understand your statement, that it was not intended to be locked in concrete, and to the extent it works out to be a practical problem, we certainly will be talking to the carriers with respect to any perceived problem.

We, again, would be glad to make sure that there is not such a prohibition. I don't think it is your intent, and it is not our intent either.

Senator **Breaux**. How would the bill work in your opinion with regard to those carriers that are both domestic carriers as well as international carriers eligible to receive ODS?

Mr. **Gaughan**. My reading of the bill, Mr. Chairman, did not address that particular question. I may have missed it. We are now into the 804–805 determinations where, if you are a subsidized international operator, you must get approval from the Department to provide a domestic or foreign service.

There are situations where that has been granted.

Senator **Breaux**. In other words, you do not see any change in the bill, or current law, with regard to handling of that particular problem or situation?

Mr. **Patton**. Well, it does not change Section 805(a) or 804. So it leaves the current law.

Whether that is a problem for people when they come under it, as a practical matter, is another matter.

Senator **Breaux**. But you do not see any change in existing law with the bill with regard to domestic and international carriers?

Mr. **Patton**. We did not see that that was the intent, and as we read it, it does not change 805(a) or 804, which is the subject of domestic and foreign flag affiliations.

Senator **Breaux**. Did I ask you about any perceived estimated costs if the legislation were to be adopted?

Did you come up with a suggested figure on that?

Mr. **Gaughan**. Mr. Chairman, I do not have a figure. I must tell you that when I read it and saw that it would allow, to me, any unsubsidized operator to come in with whatever size fleet and they would get subsidy, that is going to add a significant amount of money because you are talking about a large number of vessels, sir.

I do not have the number.

Let me cast it this way. It is, in essence, the way I saw it, taking the existing system and simply opening that up to all who want to come to the party, and at $3.5 million or so a ship-year now, I could probably come up with a number by figuring out how many vessels and then multiplying it by 20 years. It is going to be a substantial amount of money, sir.

Senator **Breaux**. Is the marketplace itself not sufficient to curtail any potential explosion of ODS applicants?

In other words, you spoke about some caps and perhaps some adjustment along the companies with regard to how many ODS contracts would be available. Some would argue probably that the marketplace is going to determine it, that you are not going to have a whole barrage of new applicants if the business is not there, even with an ODS subsidy.

Mr. **Gaughan**. Mr. Chairman—and my staff can correct me, if I am wrong—one of my concerns is if I understand Gramm-Rudman-Hollings correctly, any new costs have to be offset somewhere, and, consequently, if the costs are too high, I don't know where you are going to offset that elsewhere; and if that causes the bill not to go anywhere or be enacted because of that, then we really have not advanced the ball at all in being able to spread a reform system with some flexibility.

Senator **Breaux**. You had mentioned that your shop is meeting now and making some proposals. Of course, every year we say the same thing, that we are meeting and making new proposals.

Is this a realistic proposal?

What is your timing, from a discussion standpoint, of having something from the Department of Transportation with regard to this issue?

Mr. GAUGHAN. Mr. Chairman, I can tell you that the reform program has been worked on and cleared within the Department and has been at the Office of Management and Budget for only a short period of time, some ten days. It is unfortunate in the sense that the timing of the hearing had to be such, because I had hoped to be able to have a clear, comprehensive policy document.

It is not yet completed. We are in active discussions with OMB and other agencies to explain what we have in mind.

I would hope—I don't know when your markup is scheduled——

Senator BREAUX. For right after we get your recommendations.

Mr. GAUGHAN [continuing]. But I would hope, Senator, to be able to push through this so that the committee would have the benefit of it at the earliest convenience. Well, "convenience 'is the wrong word. We will continue to work on it. It is simply not completed.

Senator BREAUX. I want to ask what the recommendations from DOT are. But is the concept of ODS cost versus ready reserve fleet costs, is that one of the items that is being discussed?

Mr. GAUGHAN. That is not part of this package.

I don't know if it is a problem, Mr. Chairman, in that regard, but the funding for the RRF comes under the Defense Department account. The funding for ODS comes under the Department of Transportation account. They are two different accounts, handled by two different associate directors in OMB.

Senator BREAUX. I absolutely realize that. But somebody has to realize that they are both coming from the same government, and it is not sufficient to say that we're not going to increase maritime Department of Transportation assistance to the Merchant Marine fleet and at the same time we are spending hundreds of millions of dollars to do the very same thing in another department.

Somehow, somebody has to make these people realize that we are spending the same money for the same goal. It is unacceptable, I think, for any administration to say that we are not going to spend any more for assistance to the U.S. Merchant Marine commercial industry, but we are going to spend hundreds of millions of dollars in another department with the same real goal, to have a fleet that is ready to carry military cargo in the time of a national emergency.

It is the same money. It is coming from the same taxpayers. It is just going into a different account.

We have to get rid of that myopic thinking that somebody is looking at. Money is money. It is coming from the same place and it is being spent for the same purpose.

I just happen to think that it makes a hell of a lot more sense to spend it in the Department of Transportation and MarAd to take care of the commercial industry because you have the manpower, which is already there, you have active ships that are in good shape and ready to go to work.

Why have a ready reserve fleet if we can take care of it in a different way. It is probably going to be less expensive.

Mr. BOWMAN. Mr. Chairman, when we briefed OMB in the last couple of days on the Department's proposal, we did make it very clear to them that a healthy Merchant Marine and the support of a healthy Merchant Marine was going to take, we believed, a lot of pressure off the whole thrust to keep buying more vessels for the RRF.

We also indicated to them that it was going to provide for an active operating group of merchant seamen, which was a growing problem under the acquisition.

So, we have, at least, laid out that those issues are there and that they had better start considering them. And there was some recognition of that.

In terms of talking about trade-offs between money going into a DOD budget versus going into an ODS reform budget, that we did not get into.

Senator **BREAUX**. You might mention to them, too, in passing, that a healthy commercial industry pays taxes and the ready reserve fleet does not.

I would like to have a group of healthy companies that pays income taxes as corporate citizens and that generates funds, than to just keep pouring it out the other end, with nothing else coming in.

Mr. **BOWMAN**. We pointed out that they acquire the ships on the market, they maintain them and they have the crew.

Senator **BREAUX**. These are some of the areas that we need to discuss with all of you.

We have some additional questions that I need to ask. One of the companies this morning is going to testify, Mr. Gaughan, as a result of a meeting that they had with you and your staff on Title II, that it came to the conclusion that, although the ODS law applicable to liners is exactly the same as that applicable to bulkers and tankers, that MarAd may have significant reservations applying to the liner vessels an ODS structure that is applied to tankers, specifically, to circumvent Section 805; to get around it, to have an operating company either own or bareboat charter vessels obtained the operating differential subsidy contract crew, insure, repair, and operate the vessel and then time charter them to a company which might otherwise have problems under 805 or 804.

Mr. **GAUGHAN**. Mr. Chairman, I had that meeting last week. I indicated that they were asking me to bite off and chew on something quite large and that I would do so and try to get back to them.

Since then, I have not chewed on it very much because of other responsibilities. But the staff has looked at it.

I understand the question and I just do not have a direct answer for you at this point, sir.

Senator **BREAUX**. Okay.

All right, Mr. Gaughan. We thank you and your colleagues for being with us. I think the discussion has been helpful, to start laying a framework on what we are trying to do.

We would like you to express the urgency of coming up with a position because legislation is pending. We have a markup scheduled for June 4 which we are going to try to keep on schedule with this legislation.

The House, of course, is also moving forward with legislation. I think there is an opportunity to get something done this year. We want you as part of the package.

Mr. GAUGHAN. Mr. Chairman, I would genuinely hope that we can provide what our view is of what the world should be like at least at that markup, so that the Congress can take up the challenge.

Senator BREAUX. "The world according to Gaughan."

All right. Thank you all very much.

We would like now to welcome our first panel this morning: Mr. Peter Finnerty, Vice President of Sea-Land Corporation, Public Affairs; Mr. Jack Park, Vice President of Crowley Maritime; Mr. Philip Grill, Director of Matson Navigation; and Mr. Erik Johnsen, President of Central Gulf Lines.

We have decided that the witness table is full, so we will not increase the size of this panel.

Mr. Finnerty, we have you listed first, so why don't you go ahead. We are pleased to receive your testimony.

STATEMENTS OF PETER FINNERTY, VICE PRESIDENT, PUBLIC AFFAIRS, SEA-LAND CORP.; JACK PARK, VICE PRESIDENT, GOVERNMENT RELATIONS, CROWLEY MARITIME; PHILIP M. GRILL, DIRECTOR, GOVERNMENT RELATIONS, MATSON NAVIGATION CO.; AND ERIK F. JOHNSEN, PRESIDENT, CENTRAL GULF LINES, INC.

Mr. FINNERTY. Thank you, Mr. Chairman.

Good morning.

I am Peter J. Finnerty, Vice President, Public Affairs, Sea-Land Corporation. Sea-Land Service, Inc., our principal subsidiary, as you know, operates the largest fleet of U.S.-flag containerships.

My statement today represents the position of both Sea-Land and our parent company, CSX Corporation.

Sea-Land is very pleased to appear today, Mr. Chairman, and enthusiastically supports Title II of S. 1183, to amend the operating differential subsidy program for liner carriers.

We commend you and the subcommittee for initiating this urgently needed legislative revision of the ODS program as it currently applies to the rapidly dwindling U.S.-flag liner fleet.

Only prompt consideration and action by Congress on ODS reform can prevent dire long-term harm to the U.S. liner fleet, and we strongly support corrective legislation.

This hearing coincides with an important period in Sea-Land's evolution. As a unit of CSX Corporation, Sea-Land is now engaged in a thorough study to define our future. It is an opportunity for exciting new growth for our company, and potentially our portion of the U.S.-flag liner fleet in foreign commerce.

Sea-Land's U.S.-flag containerships now constitute about 20 percent of that operating fleet.

Our company continues to prefer to operate a U.S.-flag containership fleet in maintaining and expanding Sea-Land's network of intermodal transportation and trade related services. We must, however, consider all investment alternatives in order to remain competitive in these increasingly harsh circumstances, and to fullfil our obligations to our shareholders.

The alternative paths for Sea-Land's future include to participation in a revised ODS program along the lines suggested by S. 1183, so as to face foreign-flag and U.S.-flag competition in a more fair and even-handed way.

If, however, we continue to be excluded from the ODS program, we will be forced to expand use of foreign-flag containerships through a variety of options, including space charters, joint ventures, and other forms of rationalization.

Or, we could continue operation of U.S.-flag liner vessels in foreign commerce without participation in the ODS program.

It is fair to say, however, that the last option is unlikely to survive thoughtful analysis. Despite our large investment in a modern, efficiently operated containership fleet and the dedicated efforts of thousands of our very able people, Sea-Land suffered a loss in 1986 of $59.7 million.

It should also be noted that our sea-going labor force has agreed to significant reductions of crew costs in helping Sea-Land to meet its competition.

Despite that, I must respectfully report that if an ODS reform package is not enacted, we must consider increasing our foreign-flag operations or significant rationalization of our operations.

Reform of operating subsidy in 1987 is not frosting on the cake; it is a necessity. We say this not as a threat, but simply as a fact.

Sea-Land's substantial loss occurred in a year when United States Lines lost hundreds of millions of dollars even after about $47 million in ODS and was forced into a Chapter XI bankruptcy proceeding. American President Companies saw net earnings drop to $18 million last year, after ODS of about $64 million. We understand that Lykes Bros. Steamship Company also had a very difficult year in 1986, after $89 million of ODS.

The necessity of curing the glaring inequities in the ODS program by statute at this time cannot be overstated. We simply cannot reinvest in U.S.-flag containerships excluded from the ODS program, while federal ODS funds are provided to our U.S.-flag competition. This situation threatens the viability of the entire liner fleet and undermines national defense capability. The great significance of this need evokes a comparison with the warnings that preceded the demise of the U.S.-flag, passenger ship fleet in the 1960's. Thousands of trained U.S. officers and crewmen were forced to seek other employment.

The U.S. liner fleet must not suffer the sort of decline that occurred in the 1960s, in U.S. passenger ship operations.

S. 1183 offers a fine starting point on a Congressional remedy to the ODS program for liner carriers. If enacted, it would redress much of the competitive handicap imposed by Federal maritime policy.

We understand that Section 205 of S. 1183 is intended to grant eligibility to existing U.S.-flag liner vessels as well as future construction. We have attached suggested clarifying language so as to assist proper future interpretation. Other comments in support of S. 1183 follow:

1. It is essential that existing U.S.-flag liner vessels, whether built or rebuilt in the United States or abroad, be legislatively designated as eligible to receive ODS and complete for carriage of government-impelled cargoes without an unnecessary three year waiting period. The Reagan Administration has advocated that foreign-

built, as well as U.S.-built, U.S.-flag liner vessels should be so designated since 1982. Sea-Land first supported such a reform in Congressional testimony in 1979.

2. The bill properly directs the Secretary of Transportation to contract for ODS with qualified liner carriers. Unless Congress mandates this implementation of Title VI of the 1936 act, as amended, the administration will continue to deny participation in this vital statutory program. Such an unjustified refusal to provide Federal support called for in the 1936 act, if allowed to continue, will result in the further shrinkage of the U.S.-registered liner fleet. Unless all U.S. liner carriers are allowed to fairly participate in the ODS program, the U.S.-flag liner fleet can be expected to rapidly diminish to a handful of ships that would survive only by charging higher rates on government-impelled cargoes. This outcome would obviously eliminate the merchant fleet needed to meet the sealift needs of our national defense policy.

3. Once Congress has set an even-handed basis for competition by making all U.S.-flag liner ships, wherever built, eligible for ODS, Congress should reform the ODS system by ending outmoded regulatory barriers.

We support S. 1183's elimination of essential trade routes in all respects as a positive, pro-competitive step.

We understand that Section 605(c) would only come into play when U.S.-flag liner capacity had reached a level sufficient to carry 50 percent of the entire U.S. liner trade in foreign commerce.

To be certain that the trade routes are properly deregulated, we suggest use of language similar to that used in Section 620(a) of S. 2662 last year.

4. Foreign-flag feeder ships are an important element in modern container transport networks. Acting as a pickup and delivery system among foreign regions, foreign-flag feeder ships are able to increase the amount of cargo on U.S.-flag line haul containerships operating between hub ports.

We understand that S. 1183 would not alter MarAd's existing authority under Section 804 to authorize feeder ship services, where needed.

5. Fair treatment of domestic commerce liner vessels is just as important as fair treatment of ODS liner vessels in foreign commerce. We understand that S. 1183 preserves the Section 805(a) authority over domestic trades and ODS liner vessels.

We thank you for the opportunity to testify on this vital legislation, and I would be anxious to respond to any questions the subcommittee might have.

[The appendix follows:]

APPENDIX.—TECHNICAL SUGGESTION

Sec. 205. Section 615 of the Merchant Marine Act of 1936 (46 App. U.S.C. 1185) is amended to read as follows:

Section 615. Notwithstanding any other provision of law, any liner vessel over five thousand deadweight tons documented under the laws of the United States and either owned or operated by a citizen of the United States shall be deemed to have been built in the United States (regardless of where actually constructed, reconstructed, or modified at any prior date) for the purposes of this title (except section 607), section 901(b) of this Act, and section 1142 of the Food Securities Act of 1985.

Delete Sec. 206 and renumber Sec. 207 as Sec. 206.

Senator BREAUX. Thank you very much.

We will next hear from Mr. Jack Park.

Mr. PARK. Thank you very much, Mr. Chairman. I will summarize my statement in the interest of time, if that is acceptable.

We have a suggestion for a single modification to your bill, which would enable subsidiaries of Crowley Maritime to participate in the program, should this bill become law. Of course, that suggestion is the one about which you asked a question of Mr. Gaughan.

In order to understand the suggestion, it is probably first necessary to outline the kinds of services that we are in.

Our statement describes them to some extent. But I will only say that we are in the domestic trade. We operate to Alaska, Hawaii, and Puerto Rico, with common carriage. We operate throughout the domestic trades with contract carriage.

We also operate in international trade. We have foreign flag vessels, U.S. flag vessels. We have contract carriage and common carriage. We have chartered ships and we have owned ships.

Under present law, if we applied for and were granted ODS—assuming the administration would grant it—we would be required under Section 804 to either discontinue the services we provide with foreign flag vessels or reflag the foreign flag vessels which we operate.

In addition, we would be required under Section 805 to seek written permission from the Secretary of Transportation to continue to operate our domestic services.

S. 1183 would perpetuate these conditions.

S. 1183 would also, as you noted in your statement when you introduced the bill, give existing new liner ODS operators the option to provide subsidized service without any trade route limitations.

As we understand this aspect of the proposal, the Secretary of Transportation, in considering an ODS application, would still apply a Section 605(c) test; that is, whether on a worldwide basis service already provided by U.S. flags is inadequate.

Thus, for example, an ODS recipient would be able to operate vessels on particular trade routes, where service provided by U.S. flag operators is adequate and could compete with other U.S. flag operators.

Discontinuing the use of foreign flag vessels in order to receive ODS is not for us a viable alternative. We do not believe the services in which we use foreign flag vessels could be operated under U.S. flag, even with subsidy.

The capital cost of either acquiring new ships abroad or transferring the chartered tonnage to U.S. flag would make the service unprofitable.

If we were to divest ourselves of these services, someone else, perhaps a non-U.S. citizen, would operate them. There therefore would be no gain to U.S. flag shipping.

With regard to domestic services, if, for instance, it was provided that we could grandfather our existing domestic services, which, admittedly, your bill does not provide for, it would not solve our problem under Section 805(a), because it would freeze our domestic service to their present level and subject expansion to lengthy and costly hearings.

We have had extensive experience in that connection when we owned Delta Steamship Lines.

We frequently shift many of our 400 vessels in the domestic trade from one service to another. Hearings on that would seriously constrain our operation.

This problem has been solved in a number of instances in the bulk and tanker trades by having an operating company either own or bareboat charter vessels, obtain the operating differential subsidy contract, crew, insure, repair, and operate the vessels, and then time-charter them to a company which might otherwise have problems under Section 805(a) or 804.

That structure would solve our problems.

As you know, we discussed it with the Maritime Administrator, and his answer to you is what we would understand is an appropriate answer, of course.

The structure has been used by Captain Berger in a number of his transactions, by OMI, Inc., a company that operates in the domestic trade and in world trade with foreign-flag ships. Occidental Petroleum Company, with foreign-flag vessels, and also I believe, a Jones Act fleet, has arranged through the Hvide company in Florida, to have it operate subsidized vessels and charter them long-term on a hell-or-high-water time charter to Occidental. As recently as February, 1986, Maritime Administration has approved a similar structure for three subsidized vessels operated by American Maritime Transport, Inc. and chartered to an oil company with foreign-flag vessels. Thus, the amendment to the Breaux bill that we are suggesting provides for a structure that has a substantial history under existing law, at least with respect to bulk and tanker operators. Before testifying here today, we discussed the matter with the Maritime Administrator and his staff. We came to the conclusion that, although the law applicable to liners is exactly the same as that applicable to bulkers and tankers, MARAD might have significant reservations in applying the proposed structure to liner vessels.

Crowley Maritime Corporation or its subsidiaries could not participate in the program unless this structure—traditional in the bulk trades—were mandated for the liner trades when requested by an applicant.

We would like to support this bill. We think it is a very fine effort. But with regard to our own company, we would have extreme difficulty participating in the program unless this provision were incorporated.

Our amendment, which we suggest be included in the bill, is attached to my testimony as Attachment A.

Attachment B is suggested explanatory language for the committee report.

Finally, I should add that presuming we would receive ODS, while we prefer eliminating all trade route restrictions and Section 605(c) protections, if other companies disagree with that proposal, it would not be a major issue for our company.

If our charter suggestion is incorporated in the bill, we can, and would, support it wholeheartedly.

Thank you very much.

[The attachments follow:]

ATTACHMENT A
(Suggested additional or changed
language is underlined)

Sec. 203. Subsection (a) of section 6.03 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1173) is amended to read as follows:

"(a) Upon making the determinations specified in sections 601(a), 605(c) and where applicable, 602 of this title with regard to an application, the Secretary of Transportation shall approve the application and enter into a contract or amendment to a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section for the operation of such vessel or vessels in an essential service and in cruises authorized under section 613 of this title. Such contract or amendment to a contract shall be subject to such reasonable terms and conditions, consistent with this Act, as the Secretary of Transportation shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation. Such contract or amendment shall not prohibit the contractor from chartering the vessel or vessels to another company on a time or voyage or similar basis under which the contractor operates the vessel. Any such contract shall be for a period not exceeding twenty years.".

Section 2.07. Section 905 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1244) is amended by adding at the end the following:

"(i) The term 'liner vessel' means a vessel operated in common carriage on a definite, advertised schedule, giving relatively frequent sailings at regular intervals carrying cargo in international trade.".

ATTACHMENT B

Legislative History

Section 603(a) is further amended to make it clear that the Secretary shall not prohibit the subsidized operator from chartering the subsidized vessels out to another company as long as the subsidized company operates the vessels. It is intended that this include such a charter to a company which would require waiver or permission under Section 804(a) or 805(a) if it were itself seeking or receiving operating-differential subsidy. Of course, no such charter to a person which was not a citizen of the United States could be made without obtaining the approval of the Secretary under Section 9 of the Shipping Act, 1916, as amended.

Section 905(i) defines "liner vessel" as one operated in common carriage. Consistent with the amendment to Section 603(a), the vessel must be operated in common carriage but the subsidized operator may either be the common carrier or furnish the vessel for common carriage to another.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question 1. In order for an ODS recipient to carry cargo in the domestic trades, a prorata portion of the operating subsidy must be repaid to the federal government under a formula set out in Section 605 of the Merchant Marine Act, 1936. Assuming this prorata amount of operating subsidy is relinquished in return for the subsidized company operating in the domestic trade, do you feel that the subsidized operator could still have an unfair advantage over unsubsidized companies?

Answer. Crowley Maritime is of the opinion that the subsidized operator could still have an advantage in many circumstances arising out of the fact that the costs of the overall operations, (overhead, shoreside terminals, vessel capital costs, etc.) are sustained and paid for by the subsidized service and the domestic portion can be performed on an incremental or added traffic basis. The unsubsidized operator must cover all of its costs from revenue derived solely from domestic service. In addition, the principal domestic services, Alaska, Hawaii, and Puerto Rico, are largely one way trades, outbound. The subsidized operator, because its vessels proceed beyond to foreign destinations, can in effect balance its trade by returning with homebound foreign trade cargo—an opportunity not open to the nonsubsidized operator.

Question 2. This morning Matson Navigation will propose that Section 805(a) be strengthened to guard against incursions into the domestic trades by ODS contractors which are unfair and prejudicial to the objects and policy of the Merchant Marine Act. Do you agree that Section 805(a) needs strengthening?

There are two fundamental ways in which ODS contractors can become involved in the domestic trades. The first is what is frequently identified as mixed service, where a subsidized vessel in foreign trade is permitted by Section 605(a), under certain circumstances, to stop at the State of Hawaii, or an island possession or island territory of the United States, subject to abatement of a portion of its operating and construction differential subsidies. The second is what we refer to as affiliated service in which a company operating a subsidized vessel or vessels in the foreign trade also operates, through a subsidiary or otherwise, unsubsidized vessels in the domestic trades.

Crowley Maritime Corporation agrees that Section 805(a) needs strengthening as regards mixed service because, as discussed in our answer to Senator Inouye's question concerning Section 605, the subsidized operator would enjoy an unfair advantage despite the abatement of a portion of the applicable subsidy. We do not agree, however, that Section 805(a) should be strengthened as regards affiliated service, and believe it should, instead, be relaxed. The present test for 805(a) approval by the Secretary of Transportation is whether granting of a subsidy to an operator with ties to the domestic trade would result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or inter-coastal service or that it would be prejudicial to the objects and policies of the Merchant Marine Act.

The principal question concerning unfair competition has been whether the subsidy could flow through to the domestic trades. It is virtually impossible for that to occur since the subsidy is paid to offset actual out-of-pocket expenses incurred in the foreign trade. To strengthen 805(a) in connection with affiliated service really results in unreasonable protection to companies operating exclusively in the coastwise or inter-coastal trades.

Question 3. Are you familiar with the Matson Amendment?

Answer. Yes.

Question 4. Under the amendment to Section 805(a) of the Merchant Marine Act, 1936 suggested by Matson, would it ever be possible for a recipient of operating differential subsidy to operate in the domestic trades?

Answer. We think that the Matson Amendment would make it difficult although not impossible for a recipient of an operating differential subsidy to operate in the domestic trade. The applicant for such a permission would have to show that its entrance into the domestic trade would have no significant impact on the domestic operator. Almost any proposed new operation would have some impact and in many cases would have a significant impact.

Senator **BREAUX**. Thank you very much, Mr. Park. Mr. Grill.

Mr. **GRILL**. Thank you, Mr. Chairman.

Mr. Chairman, my name is Philip Grill. I am Vice President, Government Relations, for Matson Navigation Company.

I appreciate the opportunity to appear before you this morning.

The sole purpose of my statement is to encourage the subcommittee, in whatever ODS reform bill you may ultimately approve, to incorporate an amendment that would strengthen section 805(a) of the Merchant Marine Act.

As Mr. Park has mentioned, it is section 805 that prescribes the circumstances under which the subsidized operators may participate in the domestic trades in competition with unsubsidized companies.

If I may briefly describe Matson, Matson operates a fleet of containerships that sail between the U.S. Pacific Coast and the State of Hawaii. Because Matson is an exclusively domestic operator, we receive no operating differential subsidy.

Title II, of course, of S. 1183, would reactivate the ODS program and make various other improvements in the program that are all designed to strengthen the U.S. flag liner fleet. This of course, is a goal that everyone can support.

But Matson submits that the purpose of ODS is to strengthen the U.S. flag liner companies, make them more flexible and more financially sound, so that they are better able to compete in the international trades against foreign flag liner operators and, therefore, carry a greater share of United States exports and imports.

The subsidized U.S. flag liner companies should not be able to employ their government supported assets in such a way that would adversely impact on unsubsidized domestic operators.

The way the law is currently written, Section 605 of the Merchant Marine Act permits ODS operators to carry cargo in the domestic trades under certain limited circumstances, provided that a pro-rata reduction in subsidy is incurred, in return for the privilege of using the subsidized vessel in the domestic trade.

However, the subsidized company never has the opportunity to carry cargo in the domestic trade under 605 unless they can first demonstrate to the Secretary of Transportation, under Section 805(a), that the proposed domestic service (1) would not be unfair competition to exclusively domestic operators; and, (2) would not be prejudicial to the objects and policy of the Merchant Marine Act.

Although the statutory language of Section 805(a) has remained essentially unchanged since the inception of the Merchant Marine Act in 1936, it has been rendered virtually meaningless by recent agency and court decisions.

So, Matson, therefore would be urging this Subcommittee to strengthen Section 805(a), even in the absence of an ODS reform effort. But the fact that you are considering ODS reform and, therefore, attempting to strengthen the subsidized companies widens the gap between the subsidized companies and the unsubsidized, and makes the need to strengthen 805(a) even more pressing.

I have attached to my statement a specific statutory amendment that would strengthen 805(a). Essentially, it provides that if the proposed domestic service by the subsidized company would have a "significant adverse impact" on the existing exclusively domestic operator, then that service would not be permitted in the domestic trade.

Essentially, what we are trying to avoid is an over-tonnaging of the domestic trades by subsidized companies.

That concludes my statement, Mr. Chairman. Thank you.

I will be happy to respond to any questions you may have.

[The statement and questions and answers follow:]

STATEMENT OF PHILIP M. GRILL, VICE PRESIDENT, GOVERNMENT RELATIONS, MATSON NAVIGATION COMPANY, INC.

Mr. Chairman and Members of the Subcommittee, I am Philip M. Grill, Vice President, Government Relations, of Matson Navigation Company, Inc. Thank you for this opportunity to discuss the future of the operating-differential subsidy (ODS) program as it impacts on Matson. The purpose of my testimony today is to urge the Subcommittee to strengthen the provisions of Section 805(a) of the Merchant Marine Act, 1936 to prevent operating-differential subsidy contractors or their affiliates from operating in the domestic trades when it would impair exclusively domestic services.

Before discussing this problem further, I would like to briefly describe Matson's operation. Matson has served Hawaii since 1882. Matson operates an efficient fleet of container and container/trailer vessels carrying primarily containerized cargo and automobiles between U.S. Pacific Coast ports of Los Angeles, Oakland, Portland and Seattle and Honolulu, in regularly scheduled service. Cargo destined for the Neighbor Islands of Hawaii, Kaui and Maui is transshipped in Honolulu from the line-haul vessels to two container barges and is delivered weekly to four Neighbor Island ports. Since 1970, Matson has invested over $300 million in vessels and barges, built in United States shipyards, serving the U.S. Pacific Coast/Hawaii trade. Since Matson operates exclusively in the domestic trade, we receive no operating subsidy.

Title II of S. 1183 would reactivate the operating differential subsidy program, make all foreign-built or rebuilt liner vessels eligible for ODS, eliminate trade route limitations for ODS liner operators, and give ODS liner operators greater freedom to provide unsubsidized service with U.S.-flag vessels in international trade. These steps are obviously intended to strengthen the U.S.-flag liner fleet—a goal we all support. Matson submits, however, that the purpose of operating differential subsidy and the proposed changes in the ODS program is to make the U.S.-flag liner fleet financially stronger, more flexible, and better able to compete with foreign-flag liner operators and, thus, improve the share of United States exports and imports which move on U.S.-flag ships. Matson believes that U.S.-flag liner operators utilizing the new, more advantageous subsidy system should not employ their government supported assets to adversely impact on existing unsubsidized domestic services.

Currently, Section 605 of the Merchant Marine Act, 1936 permits ODS operators to carry cargo in the domestic trade, in competition with unsubsidized U.S.-flag operators, under certain limited circumstances, provided that a prorata portion of ODS is forfeited. Recognizing the inherent advantage that a subsidized operation may have over unsubsidized vessels (even with a prorata subsidy payback) a subsidized operator never has the opportunity to carry domestic cargo under Section 605 unless he can first demonstrate under Section 805(a) that the proposed domestic service (1) would not result in unfair competition to persons operating exclusively in the coastwise or intercoastal service and (2) would not be prejudicial to the objects and policy of the Merchant Marine Act, 1936. Although the statutory language of Section 805(a) has remained unchanged since the inception of the Merchant Marine Act in 1936, it has been rendered almost meaningless by recent agency and court decisions. Matson would, therefore, urge the Subcommittee to strengthen Section 805(a) even in the absence of a legislative ODS reform effort, but the benefits of ODS reform accruing to subsidized U.S.-flag carriers make the need to strengthen Section 805(a) even more pressing.

DISCUSSION

More specifically, Section 805(a) makes it unlawful for the Secretary of Transportation to pay operating-differential subsidy to contractors if they or their corporate or individual affiliates own, operate or charter, or have any pecuniary interest in, vessels engaged in domestic intercoastal or coastwise service, without the written permission of the Secretary. The statute requires denial of applications for written permission if the Secretary finds that approval will result in "unfair competition to any person, form or corporation operating exclusively in the coastwise or intercoastal service" or that it would be "prejudicial to the objects and policy" of the Act.

Section 805(a) also provides that it shall be unlawful for any subsidy contractor or affiliate to divert, directly or indirectly, any moneys, property, or other thing of valkue, used in foreign trade operations, for which a subsidy is paid, into any coastwise or intercoastal operations.

Matson has an exclusively domestic liner service in the carriage of cargo between ports on the U.S. Pacific Coast and ports of the State of Hawaii. Other operators have exclusively domestic liner services in the Hawaii, Alaska and Puerto Rico trades. All face the threat of competition by oprating-differential subsidy contractors or their affiliates which is potentially unfair or prejudicial to the objects and policy of the Merchant Marine Act. Since the 1970 amendments to the Merchant Marine Act extended operating-differential subsidy to bulk carriers, exclusively domestic liquid or dry bulk carriers face the same threat. Matson's President, Michael S. Wasacz, recently represented the Jones Act liner operators as a member of the Congressional Maritime Caucus Advisory Board. The unsubsidized Jones Act liner operators group was unanimous in recommending to the Maritime Caucus Chairman Walter Jones that Section 805(a) be strengthened.

The need to strengthen and clarify Section 805(a) is largely the result of a December 1984 decision of the Secretary of Transportation in Docket No. S-724, *Aeron Marine Shipping Company, et al.* That decision rendered Section 805(a) virtually meaningless by holding that:

(1) There can be no "unfair competition" in the absence of diversion of subsidy funds to the domestic trades.

(2) It is not necessary for operating subsidy applicants to disclose the nature and scope of operations they propose to conduct in the domestic trades, or even which domestic trade or trades will be served.

(3) Once operating subsidy applicants have shown that there will be no diversion of subsidy funds, the burden shifts to the protestants to establish prejudice to the objects and policy of the Act.

(4) Adverse impact on exclusively domestic operators of the entry of operating-differential subsidy contractors or their affiliaites is irrelevant. The only relevant consideration is the long range impact on the level of service in the trade in question.

The decision of the Secretary of Transportation was upheld by the United States District Court for the District of Columbia and is now under appeal to the United States Court of Appeals (Nos. 85-5927 and 85-6004).

As previously mentioned, Section 805(a) specifically provides that it shall be unlawful for any operating-differential subsidy contractor or affiliate to divert any money or other thing of value used to support foreign trade operations, for which a subsidy is paid, into the coastwise or intercoastal trades. The logical interpretation of the Section 805(a) requirement that applications for written permission be denied if the Secretary finds that approval will result in "unfair competition" is that "unfair competition" means something other than diversion of subsidy funds to domestic trades. There is no need to declare "unfair" that which has already been declared unlawful. The Secretary's decision in *Aeron Shipping Company*, therefore, effectively repeals Section 805(a)'s prohibition against "unfair competition" by limiting it to unlawful diversion of operating-differential subsidy funds into the domestic trades.

The present policy of the Maritime Administration/Maritime Subsidy Board to accept blanket applications for service in any and all domestic trades without requiring disclosure of even a general plan of operation, makes it impossible for a protesting domestic carrier to sustain its burden of proof to establish that this future unspecified activity will cause unfair competition or prejudice to the objects and policies of the Act. Without having some idea of the proposed domestic operations, it is impossible for a protestant to assess or prepare a showing of the extent to which its ability to continue operations will be impaired. Yet, even if an unsubsidized protestant could sustain its burden in proving that it would be driven out of business or forced to curtail service, that would not be sufficient to establish prejudice to the objects and policy of the Act under the Secretary's decision. Under *Aeron Shipping Company*, the Secretary requires protestants to prove that entry by an operating-differential subsidy contractor or its affiliate into the domestic trades will have a long-term adverse impact on the availability of shipping services in the trade. That is an impossible burden of proof because it involves long-range forecasting of the actions of other parties.

Incursions into the domestic trades by operating-differential subsidy contractors or their affiliates which have an adverse impact on existing exclusively domestic services should be considered unfair and prejudicial to the objects and policy of the Act.

To renew the vitality of Section 805(a), and to foster its purpose in preventing impairment of exclusively domestic services, S. 1183 should be amended by renumbering the present Section 206 and 207 as Sections 207 and 208, respectively, and inserting a new Section 206 as follows:

SEC. 206. Section 805(a) of the Merchant Marine Act, 1936 (46 U.S.C. Section 1223(a)) is hereby amended by striking the colon preceding the proviso, substituting a period and adding: *"Applications for written permission shall be required to disclose the nature and scope of operations proposed to be conducted in domestic intercoastal or coastwise service. The Secretary of Transportation shall consider the impact of a grant of written permission on the operations of existing exclusively domestic services, and shall disapprove applications if approval would be likely to impair the ability of existing exclusively domestic services to continue adequate levels of service to smaller ports or would otherwise have a significant adverse impact on existing exclusively domestic services.*

Thank you for your consideration of our views.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. In order for an ODS recipient to carry cargo in the domestic trades, it must obtain written permission under Section 805(a) of the Merchant Marine Act, 1936 and, under Section 605(a) of the Act, take a reduction in ODS for each voyage by an amount which bears the same ratio to the subsidy otherwise payable as the gross revenue from coastal or intercoastal trade bears to the gross revenue derived from the entire voyage. Assuming that the prorata reduction in ODS has been made under the Section 605(a) formula, do you feel that the ODS recipient still has an unfair advantage over exclusively domestic operators?

Answer. Yes, for the reasons noted below:

1. The formula for ODS reduction based on the ratio of domestic to foreign commerce revenue may not be adequate to eliminate subsidy support for the domestic carriage. In past Section 805(a) cases the Maritime Subsidy Board has recognized the possibility that there will be "residual subsidy" after reduction of ODS under the Section 605(a) formula.

2. An ODS recipient with permission to operate in the domestic trades has an inherent advantage over the exclusively domestic operator in that the ODS recipient has flexibility to shift the emphasis of its operations between the foreign and domestic trades on an opportunistic basis. When cargo volume and rates are high in the foreign trades the ODS recipient can emphasize foreign service. When cargo volume is low or a temporary rate war is going on in the foreign trades, the ODS recipient can emphasize domestic service. The exclusively domestic operator, which Section 805(a) is designed to protect, has no such flexibility. Its vessels are required by law to be built in U.S. shipyards at a cost that makes them non-competitive in the foreign trades. The ODS recipient either has vessels built with the aid of CDS (not available to exclusively domestic operators), or uses foreign-built vessels under the "window" legislation permitting their use by ODS recipients. Foreign-built vessels, however, cannot be used in domestic commerce. Thus, there is no mutuality of opportunity to compete in the other operator's back yard. It is a one-sided advantage in favor of the ODS recipient to the extent that it has CDS-built vessels available for use in the domestic trades.

3. Recipients of ODS who operate CDS-built vessels on mixed foreign/domestic voyages have an unfair advantage over exclusively domestic operators who must use vessels built in U.S. shipyards without CDS. Under the CDS program the U.S. Government paid approximately 50 percent of the cost of vessels. When CDS-built vessels are used in domestic commerce, Section 506 of the Merchant Marine Act requires the operator to pay annually to the Secretary of Transportation that proportion of one twenty-fifth of the CDS paid for the vessel as the gross revenue derived from domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The formula is unfair because it does not require the ODS recipient who operates CDS-built vessels to pay interest on the unamortized CDS still in the vessel. It allows the operator an interest free loan on the 50 percent of the cost of the vessel paid by the the U.S. Government, with the principal only to be repaid to the Government over the twenty-five year statutory life of the vessel. The exclusively domestic operator, in dramatic contrast, has to pay interest on the full amount of the borrowed purchase price of its vessels.

4. The ODS recipient can "skim the cream" of the higher rated cargoes in the domestic trades, and not concern itself about lower rated cargoes and the smaller ports, both of which are vital to the economies of the non-contiguous domestic

trades. The exclusively domestic operator looks to the total ocean transportation needs of its domestic trade. It sizes and configures its fleet to assure carriage of all cargoes and services to all ports. It cannot continue to provide that full service if it loses the higher rated cargoes to the "cream skimmer."

5. The containerships of today have carrying capacity several times that of the conventional stow vessels in use in 1936 when the Merchant Marine Act was enacted. Only a few of the large containerships of today are needed to serve a domestic trade. Permitting an ODS recipient to enter a domestic trade with large foreign commerce containerships would cause a major overtonnaging of that trade. The consequences of that overtonnaging are far more serious for the exclusively domestic operator than for the ODS recipient. The latter can offset the adverse effect of the overtonnaging with the profits from its subsidized foreign trade operations. Because its vessels built in U.S. shipyards without CDS are non-competitive in foreign trades, the exclusively domestic operator has no way to offset the adverse effects of overtonnaging.

6. Applications for written permission under Section 805(a) usually involve one-way service in the direction that is backhaul for the ODS recipient but headhaul for the exclusively domestic operator. Backhaul cargoes are often priced on an incremental cost basis because the vessels and containers have to return to the voyage origin point with or without cargo. Headhaul cargoes should be priced to recover a profit on fully allocated costs because they determine the size and configuration of the fleet and scope of operations. Hence, written permission to operate in domestic commerce gives the ODS recipient an inherently unfair pricing advantage over the exclusively domestic operator.

Question. This morning Matson Navigation Company will propose that Section 805(a) be strengthened to guard against incursions into the domestic trades by ODS contractors which are unfair and prejudicial to the objects and policy of the Merchant Marine Act.

(a) Do you agree that Section 805(a) needs strengthening?

Answer. As more fully discussed in Matson's record statement, the need to strengthen and clarify Section 805(a) is largely the result of a December 1984 decision of the Secretary of Transportation in Docket No. S–724, *Aeron Marine Shipping Company, et al.* That decision rendered Section 805(a) virtually meaningless by holding that:

(1) There can be no "unfair competition" in the absence of diversion of subsidy funds to the domestic trades.

(2) It is not necessary for operating subsidy applicants to disclose the nature and scope of operations they propose to conduct in the domestic trades, or even which domestic trade or trades will be served.

(3) Once operating subsidy applicants have shown that there will be no diversion of subsidy funds, the burden shifts to the protestants to establish prejudice to the objects and policy of the Act.

(4) Adverse impact on exclusively domestic operators of the entry of operating-differential subsidy contractors or their affiliates is irrelevant. The only relevant consideration is the long range impact on the level of service in the trade in question.

Traditionally, the "objects and policy" clause of Section 805(a) has been interpreted as requiring the Secretary to examine the impact of proposed domestic operations by subsidized companies on unsubsidized domestic operators. Matson feels strongly that the $500 million which Matson has invested in the Hawaii trade since 1970 (without the benefit of government subsidy payments) should be taken into account by the Secretary in decisions which will establish whether, or to what extent, subsidized companies will be allowed to compete with Matson which will significantly impact Matson's sizeable investment and commitment to the Hawaii trade.

(b) Are you familiar with the Matson Amendment?

Essentially the amendment suggested by Matson to the Merchant Marine Subcommittee at the hearing on May 20, 1987 (1) requires applications for written permission to disclose the nature and scope of operations proposed to be conducted in the domestic trades by subsidized companies, (2) requires the Secretary of Transportation to consider the impact of domestic operations by a subsidized company on existing exclusively domestic services, and (3) requires the Secretary to disapprove applications if approval would be likely to impair the ability of existing exclusively domestic services to continue adequate levels of service to smaller ports or would otherwise have a significant and adverse impact on existing exclusively domestic services.

(c) Under the amendment to Section 805(a) of the Merchant Marine Act, 1936 suggested by Matson, would it ever be possible for a recipient of operating differential subsidy to operate in the domestic trades?

Yes. The above amendment would not totally exclude subsidized operators from the domestic trades. Subsidized operators would only be prohibited from entering the domestic trades where their entry would have a "significant adverse impact" on domestic operators. There may be cases where there is a need for additional service, in which case the subsidized operator could enter the domestic trade without creating a "significant adverse impact".

Senator BREAUX. Thank you, Mr. Grill.

Mr. Johnsen, we are happy to have you with us.

Mr. JOHNSEN. Thank you, Mr. Chairman.

First of all, I am Erik Johnsen, President of Central Gulf Lines.

Central Gulf appreciates the opportunity you have afforded us to comment on Title II of your bill, S. 1183. Before doing that, however, I would like to take the opportunity to congratulate you on your selection as Chairman of this subcommittee, and the speed and determination you have displayed in coming to grips with some of the most important problems of the U.S. flag liner industry.

Your objectives in introducing S. 1183 are admirable and Central Gulf supports those objectives.

I was pleased, however, to hear today and also note in the "Congressional Record" that you did not see the bill, as written, as set in concrete.

This is gratifying because, as we read it, S. 1183 in its present form will not accomplish the basic objectives we both support.

Central Gulf Lines is an unsubsidized U.S. flag company. It does not receive any operating differential subsidy payments.

It would be prepared to continue to operate under those conditions if there were no changes in the subsidy, the laws that now exist.

However, since S. 1183 proposes to remove those restrictions and to extend the ODS program, we believe that the removal of those restrictions places Central Gulf in the situation where we need to embrace the program, otherwise we would be considerably at a disadvantage against subsidized competitors.

As we see S. 1183 in its present form, it does not provide the type of level playing field for all competing U.S. flag liner operators that will be vitally important and absolutely necessary if the bill is to be enacted. Some of our concerns are the following.

The bill fails clearly to define which currently unsubsidized vessels—and which new, modern vessels in the process of acquisition or construction by an unsubsidized company, such as Central Gulf—will qualify for ODS under the new program.

For instance, because of the circumstances in the liner trade, Central Gulf has over the recent years removed some of its vessels from their liner services and now have these vessels under charter to MSC. We currently have one ship laid up for lack of profitable business, and we have six vessels on charter to MSC.

We think those vessels should qualify.

We recently purchased three section 615 authorities, which will permit us to construct new tonnage for our existing fleet, and we think those vessels should qualify.

We also believe there should be some growth factor for the smaller companies, such as Central Gulf, Waterman, and Farrell, which regularly compete with the larger U.S. flag carriers that either already have or would have 20 or more qualified vessels.

The specific number and type of qualified vessels, plus the growth factor, is vitally important for the government to determine the cost of the ODS and also the ability of the U.S. flag participants to understand, from the very outset, what the new program will mean to them and the type of new investment that they will incur.

The bill does not provide a fair, even, "starting gate" for the participants in the new ODS program. The trade route restrictions on companies already subsidized under the present law should not be removed until companies currently unsubsidized become effectively subsidized under the new program.

Only then will we have a level playing field.

The bill does not provide or contain a waiver or the inapplicability of section 804 and section 805 of the Act as it relates to foreign flag vessel operations and the domestic operation of the companies.

In the case of Central Gulf, we are operating domestically on the inland waterways of the United States, and we would need to have clearly understood that this operation would not prohibit us from participating under the new program.

We also would expect that companies who require the use of foreign flag vessels in their operations would not be prohibited from participating.

Finally, we believe that the bill should have some funding provisions. Last year, we were participating before this committee in the examination of S. 2662, and at that time, there was a consensus among the liner companies that the costs of the ODS reform program would be generally within the scope of the existing program, due to some adjustments by the Maritime Administration of the cost factors that make up the subsidy, such as hulling machinery, insurance, protection and indemnity insurance, and maintenance and repair costs, and the reapportionment of budget items that may not now be used by the Maritime Administration because of lack of sailings on some of the existing subsidized lines.

Finally, Mr. Chairman, we believe that no small company or large company should have any special considerations on a given protective route. We think that this would not be beneficial in the overall operation of the new program, and, as a matter of fact, it would be a step backward.

We trust that we can move forward with a new program with a level playing field and that we can, indeed, see a reversal of the downward trend of this industry.

Thank you very much for your attention. I would be pleased to answer any questions that you may have with respect to our statement.

[The statement and questions and answers follows:]

STATEMENT OF ERIK F. JOHNSEN, PRESIDENT, CENTRAL GULF LINES, INC.

Mr. Chairman, Central Gulf Lines appreciated the opportunity you have afforded to us comment on Title II of your bill, S. 1183.

Before doing so, however, I want to take this opportunity to congratulate you upon your selection as Chairman of the Subcommittee, and for the speed and determination you have displayed in coming to grips with some of the most important problems confronting the U.S. flag liner industry and, in turn, the United States which depends so heavily on this industry in times of national emergency.

Your objective in introducing S. 1183 is admirable and, of course, Central Gulf Lines supports that objective. However, I was pleased to note in the statement you inserted in the Congressional Record when you introduced the bill that its provisions, as presently written, are not "set in concrete." This was gratifying because, as we read it, S. 1183 in its present form will not accomplish the basic objective we both support.

Central Gulf Lines, of course, is in unsubsidized U.S. flag liner company. It does not receive any ODS payments under the Merchant Marine Act of 1936, and it is prepared to continue to operate without ODS if the current statutory and regulatory restrictions on ODS operations remain in place. However, S. 1183 proposes to remove those restrictions and to extend the ODS program, which is currently being phased-out by the Reagan Administration, indefinitely.

The removal of those operating restrictions on U.S. flag competitors of Central Gulf, who have been receiving $65 million to $85 million or more each year in ODS payments under the existing statute, automatically makes it essential for Central Gulf to become a full participant in the new ODS program as soon as possible after S. 1183 becomes law. Otherwise, Central Gulf will be confronted with new, unfair competition from its subsidized U.S. flag competitors that it simply cannot meet.

As we see it, S. 1183, in its present form, does not provide the type of "level playing field" for all competing U.S. flag liner operators that will be vitally important and absolutely necessary if the bill is enacted. Some of our concerns in this regard are as follows:

1. The bill fails clearly to define which currently unsubsidized vessels—and which new, modern vessels in the process of acquisition or construction by an unsubsidized company such as Central Gulf—will qualify for ODS under the new program. In addition companies such as Central Gulf, Waterman and Farrell which regularly compete with the larger U.S. flag companies that either already have or would have 20 or more ships qualified for ODS participation.

Specification of the number and type of "qualified vessels" plus an allowable ODS "growth factor" is vitally important to any determination of what the new program will cost the government in ODS, and to the ability of all U.S. flag participants to understand from the very outset what the new program will mean to them and what type of new capital investments should be contemplated for modernization and enlargement of their fleets in the future.

2. The bill does not provide a fair, even "starting gate" for all participants in the new ODS program. Trade route restrictions on companies already subsidized under the present law should not be removed until companies currently unsubsidized become effectively subsidized under the new program. Then, and only then, will a "level playing field" be established for all of the competing U.S. flag liner companies.

3. The bill does not contain a provision which makes the "foreign flag" vessel prohibitions contained in Section 804 of the Merchant Marine Act inapplicable to the currently unsubsidized companies that apply for ODS participation under S. 1183. Under Section 804(b) of the Act, the Secretary is authorized to waive these prohibitions "under special circumstances and for good cause shown." I submit, therefore, that it would be appropriate for S. 1183 to direct the granting of such waivers in cases where previously unsubsidized liner companies apply for ODS participation under that legislation.

4. Finally, as the Committee undoubtedly recognizes, S. 1183 does not contain funding provisions. At some point in the legislative process, that will probably become critical to enactment of the bill. Last year when S.2662, the "Liner Development Act of 1986," was before this Committee, a funding proposal was advance (with approval of all the U.S. flag liner companies) which would have kept the cost of a new ODS reform program generally within the scope of the existing program with perhaps a relatively small increase in funding by the government. Certain operating costs presently subsidized under the existing program (hull insurance, protection and indemnity costs, and costs of maintenance and repairs) were excluded; the ODS entitlement of each operator was restricted, and a ceiling or cap was placed on total ODS payments to participants. These fiscal ODS reforms were deemed sufficient to enable the currently unsubsidized lines to participate fully in the ODS program, and to finance a reasonable "growth factor" for the smaller lines.

One other matter not covered by S. 1183 itself, but mentioned by you, Mr. Chairman, in your Senate statement of May 12, requires comment. Your statement indicated the Committee would be "especially interested in hearing testimony on the effect trade route deregulation will have on some of our smaller liner companies," and you suggested it might be necessary "to provide some of the smaller companies with trade route protection." As a relatively small, unsubsidized liner company, I want to assure you, Mr. Chairman, that the granting of special trade route monopoly "protection" to any U.S. company, large or small, will surely defeat the salutary objective which lies at the very heart of nondiscriminatory ODS regulatory reform.

The only U.S. company known to be supporting such a proposal is already subsidized under the existing program, and it is operating today without the benefit of so-called "trade route protection." Indeed, that company is operating on a trade route which Central Gulf historically served on a completely unsubsidized basis—and which it must serve in the future without discriminatory federal intervention on behalf of its U.S. flag competitor.

Again, a "level playing field" is the answer. All U.S. liner companies must be treated fairly and equally under the new ODS program, and plainly it is not in the national interest for Congress to place artificial, uncalled for "off limits" signs on any trade route or routes simply because one of the liner company participants solicits unjustifiable special protection, rationalization agreements, or a monopoly position.

Mr. Chairman and members of the Committee, I appreciate your attention; I shall be pleased to try to answer any questions you may have; and my company and I look forward to working with you to formulate legislation in this area that will truly be in the national interest.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. In order for an ODS recipient to carry cargo in the domestic trades, a pro rata portion of the operating subsidy must be repaid to the federal government under a formula set out in Section 605 of the Merchant Marine Act, 1936. Assuming the pro rata amount of operating subsidy is relinquished in return for the subsidized company operating in the domestic trade, do you feel that the subisidized operator could still have an unfair advantage over unsubidized companies?

Answer. There are several kinds of domestic operations to identify:

(A) The domestic trade that is serviced by self-propelled ocean carriers; i.e., intercoastal (East to West Coast), East Coast/West Coast to Hawaii.

(B) The domestic trade that is serviced by Specially constructed inland tugs and barges.

(C) The domestic trade that is serviced by specially constructed tugs and barges or self-propelled vessels trading coastwise or between mainland and Hawaii—Puerto Rico.

We think service (B) and nearby coastwise should be exempt. We think service for (A) should continue to have protection under the law.

Question. This morning Matson Navigation will propose that Section 805(a) be strengthened to guard against incursions into the domestic trades by ODS contractors which are unfair and prejudicial to the objects and policy of the Merchant Marine Act.

Do you agree that Section 805(a) needs strengthening?

Answer. See answer to Question 1.

Question. Are you familiar with the Matson Amendment?

Answer. No.

Senator **BREAUX**. Thank you very much, gentlemen, for all of your statements. I look forward to working with you.

As we said, this is not in concrete. It is a starting point.

I know that as other members of the committee become actively involved in helping us write this legislation, changes will be made and, hopefully, we will continue the same objective and in working with everyone we'll come up with a bill that makes sense.

Let me have some discussion on the points that were raised about those companies that operate a domestic fleet, as well as an international fleet.

I am not sure that the bill addresses how that would be handled, other than continuing the current law.

Is that a problem?

Apparently, Mr. Johnsen, you pointed out that it may be.

Mr. Park, you said, I think, that it may be a problem for Crowley.

Mr. Finnerty, I get the impression that you are saying it is not a problem for Sea Land.

Can you tell me why, those of you who think it is a problem, that you think it would be one. What is the reason behind that?

Mr. Park?

Mr. PARK. I would be glad to.

First of all, I think I should emphasize that Crowley has, for most of its life, been a domestic operator, and only recently have we gotten into the foreign trade. The last occasion was when we acquired Delta Steamship Lines.

There is the prohibition, that is, there is the requirement for permission to operate in the domestic trade when you are receiving subsidy in foreign trade.

Obtaining permission normally results in hearings. They are lengthy, time-consuming. There is no assurance as to how you are going to end up at the end of the hearing.

In the case of Delta, we were required to limit our operations in domestic trade to the present level, plus 10 percent. And our service was described by breaking it out in several components.

We found after operating for a short time, that we wanted to move equipment between the services. We wanted to increase our capacity by expanding the size of our ships and by adding some new equipment. And, in order to do that, we had to go to the Maritime Administration and get permission to do so.

It was granted, but only after a very lengthy process, and, administratively, a very difficult one.

Senator BREAUX. So you are talking about it being a real problem because when you want to move in between the trades with the same vessel, I guess——

Mr. PARK. Yes.

Senator BREAUX [continuing]. Just a hearing takes so much time that you are not certain of the outcome, really?

Mr. PARK. Yes, that's right. There are restrictions placed upon you.

Also, I think we want to comment about our views on section 805.

We see two different kinds of services in domestic trade operated by subsidized operators. One is what we call mixed service, such as that operated now by U.S. Lines to Hawaii, formerly on route to the Far East. The second is what we call affiliated service.

Although we do not, in general, believe it appropriate for a subsidized operator to provide service, mixed services, such as U.S. Lines provides to Hawaii, we recognize that in the case of Hawaii realism is that it is not going to change in that case. But we do not see that operating as an affiliated service in domestic trade should be a great problem.

I know that Matson feels otherwise. But we do not see that there is necessarily any great potential for a flow-through of subsidy into the domestic trade.

That is our view on the domestic trade relationship.

Mr. JOHNSEN. Mr. Chairman, our operation, since it emanates from New Orleans, is a little different, because we are dealing with barges and tugboats on the Mississippi River. So we are not in the offshore, competitive aspect of perhaps Matson and Crowley. So we have a third element of domestic operation that, frankly, we do not think would be in any way competitive with any of the subsidized services.

Senator BREAUX. Thank you.

Anyone else?

Mr. GRILL. Mr. Chairman, if I could just add one comment, we are now looking at the most recent decision of the Secretary of Transportation that interpreted section 805(a). In that decision she concluded that the subsidized company can have an adverse impact on the unsubsidized company, even drive the unsubsidized company out of business.

Senator BREAUX. I appreciate that, but that is another point. We are going to get to it. I do not mean to overlook it. But I am looking at it from the standpoint of an operator who is a domestic and an international operator right now. Two of them said that it is a problem. Sea Land said it is not a problem.

Mr. Finnerty, what is your perspective on it?

Mr. FINNERTY. Mr. Chairman, what we tried to say in the statement was that we read and were trying to confirm that S. 1183 does not amend either of those two sections.

In terms of what the future might hold, we are obviously well aware of some of the problems that have cropped up with respect to these sections. The Maritime Administration has discretionary authority, and under the sections, there is a long series of cases and holdings, some of which have been referred to.

The proposals that have been offered we would have to study before we could comment pro or con on a change. But our feeling was that if, in an effort to expedite the legislation, it did not try to solve those problems at this time, that would certainly be important to us in hoping for early action by the subcommittee.

Senator BREAUX. What we are trying to do, obviously, is to try to provide assistance to domestic carriers who can compete in international trade. We do not want to provide assistance for those who compete domestically against other carriers.

It is almost a mechanical problem. It is a very serious problem to you all, but it is a mechanical problem to make that determination and, Mr. Park, to make it in a timely fashion and not have it dragged out over a long period where you don't know what is going to happen.

But I do not see it as a policy problem as much as I see it as a question of mechanically making sure that we are not subsidizing a domestic carrier.

That is a mechanical thing for which I think we can come up with some reasonable solutions.

Mr. Grill, your problem is the possibility with the new legislation of a subsidized carrier coming in and going into the domestic carriage against, maybe, your company, who would not be a subsidized carrier.

We are not changing the law on that, as I read my legislation. You would still only be able to do that under current conditions, which means that you have to come in and make an application.

You are talking about some problems with the way things are being handled. Again, our bill does not really make that any worse or any better.

Isn't that correct?

Mr. GRILL. Yes, sir. That is true.

The only comment I would make, however, is that because your bill presumably is going to make the international carrier stronger, that is going to widen the disparity between the international carriers and the unsubsidized carriers.

Senator BREAUX. So you are suggesting that we should take a look at trying to strengthen that to make sure that that does not occur?

Mr. GRILL. I think that we are now facing a situation where, potentially, the domestic trades could be severely over-tonnage subsidized companies and, yes, you could almost look at my suggestion as a preventive measure. The domestic trades are relatively healthy now, but they will not remain so if we are faced with this.

Senator BREAUX. But would not your company be able to come in and receive ODS and participate in the trade routes that are now being eliminated?

Mr. GRILL. We are now strictly operating in the domestic Hawaii trade. If we wanted to go into the international trades, yes, I guess we could apply for ODS the same as anyone else. But I don't believe we have any interest in doing that at the moment.

In fact, we do not.

Senator BREAUX. Okay.

Mr. Johnsen.

Mr. JOHNSEN. Mr. Chairman, I would just make an observation here after hearing Mr. Park and also hearing from Matson. I do not see where an inland operation would overlap with the problem that those two companies are talking about.

I think we have a different circumstance.

Senator BREAUX. I agree with that. That is a good point, Mr. Johnsen.

One of the things that you point out is, I guess, the question of what type of operations would qualify for ODS. We are talking about liner carriers.

Your company is involved, apparently, in looking at some combination type of vessel that could do both.

Mr. JOHNSEN. That is correct.

Senator BREAUX. The question is whether our bill does not specifically address whether that would be eligible for ODS assistance.

The concept is that a determination on ODS assistance will be made by the type of operation that ship is being used in, i.e., that it would qualify for ODS when it was in the liner type of operation, when it was in some other thing, tanker carriage, or whatever, when it was operating in that route, that it would not be eligible for it; and when it would be operating as a liner carrier, that it would be eligible for ODS.

In other words, it was the use to which that vessel would be put to determine whether or not it is eligible.

Mr. JOHNSEN. I think that last year we went through this scenario. I guess, as you rightly say, we go through it every year.

The problem comes up as to what vessels qualify because previously they had some historical base of what the ships were doing over the last year or the last two years and so forth.

The point is that companies such as ours have had to do adjustments in order to stay alive. Consequently, we may not fulfill the specific type of use factor that they may be using.

For instance, we have ships that are normally our liner vessels and they are chartered to MSC. We wanted to be sure when they come off those charters that they immediately qualify.

We don't want to be ruled out because of some intermediate usage that we have been using these ships for.

Senator Breaux. That goes into the definition of what your ship is, I guess.

Mr. Johnsen. I guess it is a definition of what the ship is. That's correct. And is it a ship that is usable for the liner services that we intend it for.

I think the point is that the type of ships we are intending are suitable for container and also suitable for breakbulk type vessels—more in line, I would assume, that would be in close with what the military wants. But presently, the existing ships we have are under MSC charter, and when they come off, we want to be sure that we are not ruled out.

Senator Breaux. I take it those vessels would be publishing tariffs, having a regular service, which would be an indication that it sounds like a liner for the purposes of ODS.

Mr. Johnsen. That is correct.

Senator Breaux. Okay.

I know that you are concerned, and I want to make sure that if there is a program, you are not "X-ed" out by the definition. I understand that.

There was a point that you also made, Mr. Johnsen, in your testimony about the trade route restrictions on companies that are already subsidized under the present law, that they should not be removed until companies that are currently unsubsidized become effectively subsidized under the new program.

I think we had some discussion from Mr. Gaughan on that point, about some type of phase-in that he recommended. I don't know if you heard that testimony or not.

Mr. Johnsen. I heard it.

The Maritime Administration does not appear to be too concerned about two to three years. But, as Mr. Park said, time in our business is of the essence.

I think if we had a phase-in program of two to three years, you might as well phase us out and not phase us in.

If we are in a situation where we are competing with subsidized lines that are getting anywhere from $65 million to $100 million a year, and they are immediately released from their restricted routes, and then we don't phase in for "two or three years," then we are phased out.

Senator Breaux. You would be eligible to move into the trade route, but you would not have a subsidy.

Mr. Johnsen. If we were to be immediately eligible, which I consider is what ought to be done, then we are satisfied, because then we could immediately implement whatever has to be done.

I don't think we should have the Maritime Administration going through hearings, going through whatever, which has been the unfortunate problem in the past, before we get this thing implemented.

I think if we get a bill that we have all accepted, then the unsubsidized lines should immediately be eligible and be qualified and proceed.

Senator **Breaux**. Mr. Finnerty, did you have a comment on that?

Mr. **Finnerty**. I just wanted to agree, Mr. Chairman, with the fact that the only way to keep the competitive situation balanced is to do just as Mr. Johnsen suggests.

One has to be contemporaneous with the other. It is only after that competitive balance, as I noted in my statement, has been fixed—that is to say, you first must make all of our vessels eligible; they must be able to participate in the subsidy program; and only then should the succession of other regulatory changes come into effect—otherwise, most of us would suffer great harm.

Senator **Breaux**. Perhaps maybe you all who are raising this point could provide the committee perhaps with some type of suggestion of a phase-in that from your perspective would be one that would be helpful in assuring that level playing field.

Mr. **Johnsen**. Mr. Chairman, we would be pleased to do so.

Senator **Breaux**. Staff suggests a consensus. There is no such thing, really.

The other thing is this. We had some discussion about the ready reserve fleet. The Maritime Administrator, in talking about that, talked about the cost of the ready reserve fleet. We are spending hundreds of millions of dollars for the Department of Defense to have ships that are going to sit there without any crews, that are going to carry, in times of national emergency, those items that need to be transported for military purposes.

My suggestion was why don't we just have a healthy U.S. Merchant Marine with men and women ready to go on ships that are currently operating; that if we have a national emergency, those could be used for that purpose.

There was some discussion about well, the ships could possibly not be the right type of equipment.

Can any of you give me some discussion on that? Say we did not have a ready reserve fleet but we had a very healthy U.S. Merchant Marine. If we get into a time of national emergency, are we going to have a U.S. merchant fleet that is not capable of handling the cargo? Would anybody give us a response to that?

Mr. **Johnsen**. I will take a stab at that, Mr. Chairman.

It is my view that the American flag operators are just as intuitive and just as ingenious as our foreign competitors, given the tools to work with.

We know that the military has certain requirements that are beyond commercial requirements. But I do believe that, given a strong support from the government with respect to the operating of these vessels and the getting of the vessels on a competitive basis, there would be a bigger mix of ships in our fleet.

We have a situation where, basically, the American liner fleet is getting down to container operation. I think that the multipurpose type of vessel we are looking at is a vessel that would be suitable not only for liner vessels but also for military purposes.

We think that other types of roll-on-roll-off vessels and other types of vessels that the military can use are commercially viable.

Whether or not they could eliminate this ready reserve fleet is something obviously they have to consider. But they might be able to reduce it, and, therefore, some of that cost could be transferred to the assistance of the Merchant Marine.

Senator **Breaux**. Mr. Grill.

Mr. **Grill**. Just briefly, Mr. Chairman, I can tell you that in Matson's service to Hawaii, between the Mainland and Honolulu, we are using containerized vessels but also vessels that have ro-ro capability to carry buses, tractors, livestock trailers, and other rolling stock, in addition to refrigerated containers and the normal conventional container cargo.

In addition, about 25 percent of the cargo that goes to Hawaii that is dropped off in Honolulu is ultimately destined for the Neighbor Islands. The Neighbor Islands have smaller ports and they are shallow draft ports and they are ports where no container cranes are available. Matson has just recently put into service two barges that are self-sustaining with their own container cranes that can service these smaller ports.

So we have a mix of vessels that would be militarily useful.

Senator **Breaux**. Mr. Finnerty.

Mr. **Finnerty**. Mr. Chairman, I think that reference to the numbers that the Maritime Administrator spoke to in his statement are useful in understanding the dimensions of the problem.

I certainly agree with you that it would be very, very important to try to maintain an active, commercial privately owned Merchant Marine, to be available for sealift in times of emergency.

The Administrator, if I recall correctly, said that the goal of the government is to have 122 ships in the ready reserve fleet and that they presently had about 82 ships.

I am not certain of my numbers. But by my estimates, the active liner fleet in foreign commerce today, flying the U.S.-flag, numbers approximately 97 ships. That number has dropped very considerably in the last several years. And unless something like S. 1183 is enacted into law this year, those 97 ships will drop even further.

The dimensions of this problem are very, very serious, and the people at the Pentagon, who, perhaps, cannot speak out publicly on this issue because of administration policy, are extremely concerned, especially in light of the progress being made in Europe on the negotiations with the Soviet Union on changing the nuclear missile situation. That will call into much greater importance the ability for Western conventional forces to be able to defend Europe and a key element in that is going to be the inadequacy of Western sealift.

Senator **Breaux**. Mr. Park, do you have any question or comment on that?

Mr. **Park**. I thought Mr. Gaughan's statement was a reasonably good one.

My recollection was that, although he recited the number of ships that the Navy, the military, was aiming for, he did not necessarily endorse that high number. He simply said that there were some types, like breakbulk ships, that might be appropriate for that, and the crane ships and so on.

I think it is a serious problem, too.

We can talk in the industry about some of the ships that we own and operate that are adaptable to military purposes—the roll-on-roll-off ships and so on. We have some of those. We have three modern ships operating to South America that have a little bit of roll-on-roll-off capacity and which are self-sustaining, which are ideal for military purposes.

But, in the long run, I think most commercial companies would argue that, in order to be competitive, we have to have ships ideally suited for the trade in which we engage.

We have, however, argued that a program like the Air Force's CRAFF program, in which design features are incorporated in the ships so that they can be used in the event of mobilization, which are fully funded by the government, and for which the increased operating costs, as a consequence of those provisions, are compensated for, is probably the best way to go.

We also are concerned about the competitive bidding system of the military, in which they attempt to drive down the rates and force us into being as economical as we possibly could.

It is conceivable that that program could be revised to adequately compensate us for the defense features.

Senator **Breaux**. One of the proposals with regard to opening up ODS—and Mr. Gaughan has mentioned this—would be some type of cap that would be applicable to an operating company, that they would not be able to have more than—and pick a number—20 ship-year ODS contracts, and that a company that would end up with more potential than they could use, then those extra slots, if you will, or extra contracts, could be sold or transferred, what have you, to other operators.

Is that a concept that is worth pursuing? Or is that an impossibility from the standpoint of operators?

Do you have any comments or thoughts about that.

Mr. **Finnerty**. Mr. Chairman, I would be happy to respond to that point.

I suspect that the initial concept grew out of the discussions between the liner companies during the past couple of years, where, in an effort to respond to the very strong point made by the Congress and the administration on budget constraints, the so-called compromise legislation that was developed included a cap in an effort to try to deal with the major companies in an even-handed way.

Throughout those discussions among the carriers and with the Congress in hearings, there was language included in that bill, as I recall—in both the Senate and the House bills—that would do what the Maritime Administrator indicated would be in their concept as well: permitting whatever the number; permitting each company to either acquire or somehow work out arrangements with other carriers, smaller or larger carriers, the most efficient combination of ship years, so that the system would not suffer by an artificial cap.

I think it is a complicated problem. It might seem simple at first. But one would have to determine exactly who would be eligible in that category. There might be, for instance, some complaints from carriers who claim they have higher authority than that today.

And, indeed, several of the companies, including our own, operate a much larger number of ships, or I should say a larger number—not a much larger number.

Senator **Breaux**. Mr. Johnsen, do you have a comment?

Mr. **Johnsen**. I think, Mr. Chairman, that Mr. Finnerty is correct.

I think that the problem, first, emanates from where do you start with the qualifying, how many ships do you initially qualify. Then there have to be some growth factors for the smaller companies, as I have outlined.

Assuming that the cap had to be put on because of budgetary constraints, and whether we can get that consensus again this year, is always questionable, but there was a consensus last year amongst the subsidized lines, the larger subsidized lines, that in order to get the program and start off on an even playing field, there would be an agreement to discuss with the Maritime Administration the excess sailings that have resulted because of bankruptcies, the fact that some of the lines are not using their full authorities, and then try to put into a program for everyone an even division, and then give the smaller lines some growth.

The problem of this chit business is this. I get concerned about it. I just believe that if we start getting the government involved in a sale and purchase type of thing for chits, it just bothers me.

Senator **Breaux**. We have some questions that we are going to submit to the shipping panel, which will address some of the things that we need to have on the record, and additionally some questions from some of the other Senators on the panel. Senator Inouye and others have some questions that they would like to have submitted. We will do that and hope that you can respond to them.

I appreciate your coming.

We are sailing on some difficult times, and, hopefully, we can all work together to come up with something that gives adequate protection for those companies that need it, and yet, at the same time, gives an opportunity for us to improve the fleet, which is what our goal is.

So we are going to work closely with all of you and your companies to come up with something on which we can all agree.

Thank you very much, gentlemen.

I would like to welcome now our second panel, consisting of Mr. Timothy Rhein, President, American President Lines—let me read the whole list, though I think we have had some changes on the panel. I will invite up, if they are here, Jim Amoss. I believe Jim is not here right now. Also Timothy Rhein, Richard Parks, President of Farrell Lines, and Mr. George Hearn, who is Vice President of Waterman Steamship Corporation.

Mr. **Rhein**. May I correct the pronunciation of my name?

Senator **Breaux**. Sure.

Mr. **Rhein**. It is "Rhine."

Senator **Breaux**. Mr. Rhein, thank you. We are pleased to have you here and are pleased to received your testimony.

STATEMENTS OF TIMOTHY J. RHEIN, PRESIDENT, AMERICAN PRESIDENT LINES; AND GEORGE H. HEARN, EXECUTIVE VICE PRESIDENT, WATERMAN STEAMSHIP CORP.

Mr. Rhein. Thank you very much, Senator.

First of all, I would like to congratulate you and the committee and the staff on what we view as a very, very positive bill. We commend the speed with which you have moved, and we encourage you to continue to move. In summary, we think it is very positive.

I might add at this point, just as a clarification, that I am representing American President Lines. I am also acting as Chairman of that Council on American Flag Ship Operators, the CASO organization, which also includes Lykes Lines and Farrell Lines.

The consensus on the part of both APL and CASO acting for Lykes and Farrell is that the bill is a very positive, forward, and timely step.

We would be extremely pleased to work with you and the staff in order to make the bill whole and move it as rapidly as possible.

I do not believe that I should read my statement. I think, since you have heard about an awful lot of the problems that are attendant to the resolution of these issues, I will just add a few more comments, if I may.

First, as a subsidized carrier, we are very supportive of the ODS program and we are supportive of the ODS program for those who are not recipients at this time.

We believe the ODS program is absolutely, fundamentally mandatory in international trade today. The anomalies that we are faced with in terms of building foreign is a Catch 22 that must be remedied.

There has not, as you know, Senator, been authority for construction differential subsidy since 1980 or 1981, and while we have been and continue to be a successful user of ODS, we have had to resort to specific legislation. We have had to resort to the use of 615 authorities, which wind up being litigated, simply in order to maintain some semblance of a competitive fleet.

Those potential means of maintaining a fleet will, or have, disappeared and the ultimate solution to the problem that we, as an international carrier, face with an ODS contract is that we would have to really seriously consider operation outside of the ODS contract if we are not given relief within the short term.

That in our opinion, is contrary and contradictory to the reason we are all here, which is to provide a competitive, and innovative, a positive U.S.-flag, U.S.-manned fleet that is a strong and viable force in international trade, as a means of providing defense support and elimination or reduction of wasteful defense dollars to maintain an unnecessary reserve fleet.

We are very positive in our support of those programs.

We think that one of the problems that has surfaced here already this morning is that there are many conflicting and many parochial interests at stake here in any form of ODS reform. We acknowledge all those and we understand them all.

We think that the bill, S. 1183, very positively has not attempted to put a patchwork quilt together of special interests in order to solve those problems. And we commend you and the committee for taking that approach. It is our firm belief, as CASO and as APL, that in order to achieve legislation of this nature, there are going to have to be compromises and special interests will have to be dealt with, but they cannot be dealt with to the satisfaction of everyone.

The major issues that need to be addressed we believe are the following:

The issue of foreign flag feeders is not included in the bill, and we think it is absolutely mandatory that it be dealt with. To put an ODS reform package together which encourages American citizens to participate and operate in international trade without the ability to operate feeder ships from small, inefficient ports that provide a great deal of the base cargo to go on the subsidized ship is unworkable.

The alternatives you face, to run the large, efficient ships that we are presently operating or building into small or inefficient ports, are unworkable. The use of existing American ships in some of these ports is unworkable. They are simply not built for that trade. They are not competitive with what the foreigners are operating, and simply are not conducive to the type of service that is necessary in order to feed a mother ship at a major hub or relay port.

The only other option is to use common carriers that are operated by foreigners in order to feed into our large, efficient ships. As I am sure you can all imagine, that is not only costly, in that you are paying a profit as well as the operating cost, but you have virtually no control.

In our trade, which is the trans-Pacific, in order to be successful, you must operate a cradle-to-grave type service, where everything is integrated, predictable, reliable, and totally controlled from Point A to Point B, including intermodal operations on both ends by the carrier that is marketing the service. Without the use and control of a foreign flag feeder fleet, this would be virtually impossible.

The ability of non-subsidized carriers today to join the subsidy program without some protection on foreign flag feeders I think would be commercial suicide on their part. I know that they can speak for themselves, but to the extent that we can, we would like to lend support to the incorporation of foreign flag feeder authority in this bill for all the players.

As you may well know, the non-subsidized carriers have very extensive foreign flag feeder networks, and it is inconceivable to us that that would disappear once they became subsidized.

So this is a very practical issue that needs to be addressed.

Number two is the issue of the deregulation of the trade routes. Here it gets a little bit difficult for me because I have to speak for three different lines that have three different levels of interest.

Historically, American President Lines has favored total deregulation and we continue to favor total deregulation. But, as a practical matter, we are very concerned that there are some issues that have not been addressed. Number one, the fact that there obviously must be some monetary constraints within this ODS reform, and, secondarily is that we have some carriers that are under the ODS program today that have invested a great deal of money, and, as a matter of fact, stake their entire futures on the fact that they have signed an ODS contract several years ago, have built their ships in less efficient American yards under a CDS program. They are not able at this point to replace those ships in a short period of time with foreign tonnage. Consequently, they are at risk if the floodgates were opened immediately to competition from the nonsubsidized carriers in terms of immediate subsidy and total deregulation of trade routes.

So I think, strictly as a practical matter, the committee is going to have to face up to this issue in the short term as to, number one, how to deal with some of the issues that were mentioned by the nonsubsidized carriers, and also in terms of dealing with some of the smaller subsidized carriers in terms of, as you put in the preamble to the introduction of your bill, ironically putting them out of business as a consequence of this legislation.

Now, Mr. Amoss and Mr. Parks are not here today. They have asked me to speak on their behalf and I will try to do that. But I am certain that you will hear from them separately, and that they will be much more eloquent on this issue than I am.

Senator BREAUX. Thank you. We appreciate your being with us.

Mr. RHEIN. Senator, I do have one more issue.

Senator BREAUX. Certainly. I was agreeing with how eloquent you were.

Mr. RHEIN. Thank you. I hope my cohorts feel the same way.

You have heard an awful lot on the issue of domestic service this morning, and we acknowledge that is a significant issue.

We have two concerns. The grandfathering, if you will, of domestic services on the part of nonsubsidized carriers coming into a subsidy program is something that we have to deal with. This is another practical issue that is not going to go away. Were we in their shoes, we would be equally concerned.

However, in our opinion, you cannot write a blank check on this issue.

It seems to us that one thing that should be considered is some sort of grandfathering program, with a cut-off date. Otherwise, we would find that everyone would be rushing to inaugurate as many domestic services as they would see fit, and you would have the chaos that was referred to here earlier by some of the domestic carriers.

There are some specific issues that we do not need to address at this time, where there are subsidized and nonsubsidized carriers attempting to compete in the same trade.

In the spirit of the level playing field, we, in CASO and we particularly in APL would not be supportive of the grandfathering, let's say, beyond January 1, 1987 of any domestic operation.

That is just a suggestion. I am sure there is a better way of doing it. But we want to make it very clear that a blank check on this issue would cause us a great deal of difficulty. Since we do not have authority for any domestic operations at this time and find that the procedure for securing those under Section 80-something—I believe it is 805(a)—are adequate. As a matter of fact, we would suggest that they be made less restrictive, contrary to the position of the Matson gentleman, who would like to see them tightened.

I will add an editorial comment here. The gentleman from Matson made the statement that you let all these subsidized carriers into the domestic trade, and even if they do pay back subsidy, you might have overtonnaging.

Well, it is hard for us to sympathize with that. I wish I could get Evergreen not to put more ships in the international trade. It would certainly solve our overtonnage problems as well.

Plus, that seems to be contrary to the mood of the government today in deregulation. We have seen what deregulation has done for the trucking, the railroad and the airline industries. It is hard for me to conceive that we should work the other way in the domestic offshore trades.

I think competition is the lifeblood of our country and certainly should not be deprived to the people of Hawaii.

Thank you very much.

[The statement follows:]

Statement of Timothy J. Rhein, President, American President Lines

Mr. Chairman and Members of the Subcommittee: I am Timothy J. Rhein, President of American President Lines (APL). APL is party to a contract with the Maritime Administration under the operating differential subsidy (ODS) program. APL must conduct its vessel operations in accordance with the terms of that contract. As a result, we have a vital interest in proposals to improve the ODS program. We are pleased to have the opportunity to testify today on Title II of S. 1183.[1] We appear today not only on our own behalf, but for the Council of American-Flag Ship Operators (CASO), whose other members are Lykes Bros. Steamship Co. and Farrell Lines. CASO members operate a majority of U.S.-flag liner vessels.

Mr. Chairman, we think Title II is S. 1183 is good legislation. We congratulate you on its introduction. The bill, and your intention to move it quickly, are positive developments. We especially applaud the bill's provision allowing ODS contractors to provide subsidized service with ships built overseas. We look forward to working with this Committee, the Congress generally, labor, and others in the industry on this issue.

THE PRESENT ODS STATUTE INADEQUATELY ADDRESSES THE DOMINANT PROBLEM FACING U.S. OPERATORS—FOREIGN-FLAG COMPETITION

Before commenting on specific provisions, we want to explain why we believe that ODS reform legislation is needed.

Operating efficiently is a prerequisite to attracting commercial cargo, which is the key to survival in today's competitive international maritime environment.

Today, the share of the U.S. liner commerce carried on foreign bottoms is larger than ever. The number of U.S.-flag companies providing liner service had dropped precipitously. We are convinced that the restrictions which ODS places on U.S. carriers has contributed to this sad state of affairs.

Today's ODS system has the nation shooting itself in the foot daily. The managers of foreign lines do not face restrictions on where they can acquire and move vessels. U.S. operators, however, are steered away from any efficient ways of conducting business by ODS requirements.

Today's maritime commerce is characterized by truly international competition. To ensure a strong U.S. merchant marine, we must not focus our laws on resolving which U.S. carriers get the bigger loaves while international competitors are cleaning out the rest of the bakery. Our concern must be to make the U.S. liner industry as a whole efficient and better able to compete with foreign-flag lines.

APL and its affiliates in American President Companies offer the most advanced point-to-point intermodal liner service in the world. In addition to containership, APL uses an extensive domestic surface transportation structure, including numerous transcontinental stack trains, in providing service primarily between Asia and the continental United States. Our services are supported by extensive computer systems which help us make maximum use of our equipment and provide state-of-the-art customer service. By being innovative and efficient, we have grown.

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[1] APL will submit shortly a separate statement regarding Title I of S. 1183, the proposed "Foreign Shipping Practices Act of 1987." However, we want to make clear today that APL and CASO believe that the introduction of Title I and the Chairman's intention to move it quickly are also positive developments.

Our ability to implement innovative services does not derive from our status as a subsidized operator. Our receipt of ODS put us in approximate wage parity with foreign-flag operators. Whether we can overcome other advantages which foreign lines have and operate profitably is up to us. That is the challenge we and other CASO members face in the marketplace every day.

However, while trying to meet the challenge, the terms of our ODS contracts often preclude us from taking desirable actions. In other words, even though our ODS contracts provide compensation which puts us in approximate wage parity with foreign competitors, the restrictive terms of ODS contracts concurrently prevent us from competing on an equal basis with foreign-flag operators in other aspects of operations.

The ODS program restrictions that most seriously reduce our ability to compete with non-U.S. operators concern vessel acquisition and operation.

RESTRICTION ON THE ACQUISITION OF FOREIGN-BUILT VESSELS THREATEN THE VIABILITY OF THE U.S. MERCHANT FLEET

The ODS program generally provides that subsidy is payable only in connection with the operation of vessels built in this country. However, it costs three to four times more to buy, and two to three times as long to build a new containership from a U.S. shipyard rather than from a yard in the Far East or Europe. The Merchant Marine Act of 1936 contemplated the ODS operators could acquire ships at world market prices. Specifically, the 1936 Act established a construction differential subsidy program (CDS), intended to make up cost differences between U.S. and foreign construction. CDS, however, has received no funding for years. Even when CDS was available, the cost of U.S.-built ships, less CDS subsidies, exceeded world market prices.

Thus, U.S. carriers face a critical dilemma today. If they buy new unsubsidized ships built in the U.S., they are at an insurmountable cost disadvantage to foreign operators and, indeed, risk bankruptcy. On the other hand, if they buy foreign-built ships, they cannot receive ODS to make up for the higher wage costs of U.S. crews. Either approach is financially untenable. As a result, U.S. operators have had little choice but to continue running relatively old, small ships which can't provide competitive service to shippers, and which require higher ODS subsidy payments from the government. But that is simply a stop gap response that can't continue for the long term.

Let me emphasize that the vessel acquisition problem is a long term one for U.S. carriers. It has not been solved, and cannot be solved, by enactment of "one-shot" legislation providing U.S. carriers temporary opportunities to buy vessels overseas and receive ODS (particularly as efforts to implement such one time fixes end up subject to protracted litigation). Companies wanting to operate U.S. ships with U.S. crew must have the ability to buy modern vessels at competitive prices—when they determine that they need the ships. This requires a change in the law.

OPERATING RESTRICTIONS HAMPER U.S.-FLAG COMPETITIVENESS

ODS carriers receive subsidy to serve particular routes. To make many of the operational adjustments required to keep up with the marketplace, an ODS opoerator must obtain regulatory approvals. The overall effect is less efficient U.S.-flag operations. In turn, that inefficiency means fewer, or at least less competitive, U.S.-flag choices for shippers.

ODS also restricts the use of foreign-flag "feeder" vessels to complement the U.S.-flag line haul services of ODS carriers. The result is that, unless special exceptions are obtained, U.S.-flag carriers can feed their major line haul services only by: (1) scheduling additional direct port calls for their big vessels (which is not cost effective); (2) operating old, inefficient, poorly sized U.S.-flag vessels; or (3) entering into connecting carrier arrangements with foreign operators, which require the ODS company to pay for the profit as well as the costs of the foreign operators feeder vessels. Further, when connecting carrier arrangements are used rather than our own service, we have little control of scheduling and much less ability to control costs. Removal restrictions on the use of foreign feeders would help U.S. carriers keep their line-haul services competitive when those of foreign operators by providing increased ability to control the costs and scheduling of the entire feeder/line haul move.

BENEFITS TO THE NATIONAL DEFENSE, SHIPPERS AND THE NATIONAL ECONOMY WILL FOLLOW FROM ODS REFORM

Many benefits will follow if the shackles of ODS restrictions are removed from U.S. carriers that want to compete in today's global maritime marketplace.

First, we see benefits to the military from ODS reform. There is no question that our nation needs sealift capacity to meet military needs in time of emergency. That capacity, however, does not simply materialize in time of emergency. Vessels and crew are either in place when a crisis arises or they are not.

The best approach to meeting emergency sealift needs is to foster a peacetime merchant fleet which flies the U.S.-flag and uses U.S. crews which will be loyal in times of crisis. The alternative of DOD paying to have its own fleet and crew available on a standby basis would be more expensive.

Second, the economic activity generated by a privately owned U.S.-flag merchant fleet provides ongoing economic benefits to the nation, including jobs and tax dollars.

If the merchant fleet declines further, rather than turning the corner and expanding, its usefulness to DOD and its contribution to the nation's economy will decline. Providing ODS carriers with greater freedom, however, can reduce their capital and operating costs, The carriers can thus become more efficient, more attractive to shippers, and increase market share.

Let me emphasize, Mr. Chairman, that we see this bill as good for shippers. It will make the U.S.-flag shipping services available to them more efficient and competitive.

As a result, U.S. carriers will generate greater activity in our national economy and reduce the need for DOD sealift expenditures.

TITLE II OF S. 1183 IS GOOD LEGISLATION

Having sketched the deficiencies in the present ODS program, we will conclude with a few words on a good piece of legislation—Title II of S. 1183.

First and foremost, we strongly support Section 205. It would permanently authorizes ODS operators to acquire liner vessels overseas and receive subsidy for running those vessels under U.S.-flag. We also support Section 206, which takes the consistent position of making foreign-built, U.S.-flag vessels immediately eligible for preference cargo. Sections 205 and 206 ensure that U.S.-flag operators can aggressively seek out competitively priced vessels.

On the trade route issue, the CASO members support, though to varying degrees, moving away from the old trade route system. However, CASO does not have a more specific position on this issue at this time due to questions as to how new applications would be treated. Section 605(c) is reaffirmed in the bill. There is uncertainty as to how Section 605(c) hearings would work under the bill. There is also concern about the ultimate impact of the bill given that presently unsubsidized operators have enjoyed the opportunity to build vessels in foreign yards and establish services at will.

We believe that the bill would more fully respond to the serious deficiencies in today's ODS program if it also included a provision authorizing ODS contractors to run foreign-flag feeder vessels. Last year a broad consensus in the maritime community was able to support legislation (S. 2662) which would have allowed ODS contractors to operate a substantial number of foreign-flag vessels. Thus, we hope that a foreign-flag feeder provision can be added to the bill at mark-up. Should other lesser or technical issues arise, we will explore them with staff.

CONCLUSION

In conclusion, Mr. Chairman, we commend you on S. 1183. It is an excellent initiative. We look forward to working with you as this legislation advances.

Senator **Breaux**. Thank you, Mr. Rhein.

Mr. Hearn.

Mr. **Hearn**. Thank you, Mr. Chairman.

My name is George Hearn, and I am the Executive Vice President of Waterman Steamship Corporation. Waterman would like you to know that we appreciate the activity that you have evidenced by the introduction of S. 1183.

We thank you for the opportunity to testify here today, Mr. Chairman. We also appreciate your concern that the bill give smaller liner companies an equal opportunity for growth, and your intention that the bill not cause the demise of any of these companies.

There is, indeed, danger that Title II of S. 1183 could cause the demise of Waterman because S. 1183 makes foreign-built ships eligible for ODS and for immediate preference cargo carriage. It authorizes unlimited competition by vessels which are not under ODS contract and eliminates trade route protection.

Mr. Chairman, foreign built vessels have capital costs and fuel costs lower than our U.S. built ships. Their acquisition cost is low for many reasons, including foreign subsidy, and they have diesel engines which were not available for our ships. Subsidized operators of these ships can charge rates which will not support U.S. built vessel operations.

Reserved cargoes under Section 901(b) of the 1936 act at compensatory rates, are necessary to the survival of any U.S. built fleet.

In addition to the problems presented by ODS-supported competition and by immediate competition for U.S. flag preference cargoes from foreign built vessels, there are other problems S. 1183 should address. With ODS payments contributing to its bottom line, a competitor can build, buy, or charter unlimited, unsubsidized foreign vessels. The acquisition cost of these vessels can be extremely low. The combined effect of ODS in their treasuries and the bargain-basement acquisition costs will be to give our competitors the equivalent of "fighting ships" which can charge rates our U.S. built ships cannot match.

If clarified and properly administrated, Section 605(c) of the 1936 act can curb the temptation to take cargo from other U.S. flag operators, which experience has shown has been too great to resist in the past.

Mr. Chairman, the drafters of Section 605(c) of the 1936 act stressed repeatedly that ODS was to be paid only for competition with foreign flag operators, not for competition among other U.S. flag operators. This is still a good policy today.

Section 605(c) was meant to prevent subsidy for new service unless the existing U.S. flag operators are not adequately serving the market and would not be unduly hurt by the new service. However, the Subsidy Board's present view precludes analysis of whether there is adequate service in individual markets or analysis of the realistic impact of the new service.

Subsidy Board oversight, under Section 605(c), to effectively prevent destructive competition is critical under S. 1183.

The 1936 act established a structure of trade routes as the fixed routes which ODS operators serve. Section 201 of S. 1183 superimposes on the trade route structure another layer of operators who will be privileged to operate without trade route restrictions. Regardless of whether the operators are restricted to fixed trade routes, the policy of preventing the waste of subsidy moneys on destructive, intra-U.S. flag competition can only be achieved if Section 605(c) is clarified to prevent subsidized operators from roaming the trade lanes as "tramps," jumping from one market to another.

If the payment of ODS is to achieve this objective, S. 1183 must insure that no ODS operator starts or changes a service unless the market will support the new service pattern and it will not cause great harm to other U.S. flag operators.

Mr. Chairman, no ODS operator should be allowed into a new market without providing first that its new service is needed to carry cargo, which can realistically support additional U.S. flag service, considering the competition, the rates, and all other pertinent conditions, and, second, that it can coexist with the existing U.S. flag service at compensatory rates for both without unreasonably adversely affecting the existing U.S. flag operators.

Only with such a test can we be reasonably certain that new ODS operations will be directed primarily against foreign flag operators.

This process, however, must be taken one step further, to insure that a new service is implemented as proposed and expected.

The Maritime Subsidy Board should have the specific statutory responsibility to make expeditious investigations on the complaint of any operator that a new service is competing to an unreasonable degree with preexisting U.S. flag services. This concept is incorporated in existing contracts, but competing operators have no practical means to call on the Subsidy Board to enforce it.

This is why it must be incorporated in S. 1183.

As U.S. Lines learned, too much freedom can be a dangerous thing. United States Lines had freedom to operate a subsidized fleet, a foreign built unsubsidized fleet, and a large foreign flag supporting fleet without Section 605(c) constraints. United States Lines was able to do this with Section 605 built-foreign authority and Subsidy Board approval.

United States Lines used this complete flexibility to invade Waterman's and other operators' markets.

This fine company, which had been operating profitably under the 1936 act's policies, went out of business with "flexibility" and foreign built ships, while taking cargo from other U.S. flag operators whose markets would not support their new services.

S. 1183 should prevent disasters like the United States Lines' experience. That is why Waterman makes recommendations to clarify Section 605(c) as part of the new program.

Waterman has suffered from the effects of over-tonnaging and depressed rates. But we managed to reorganize by cutting expenses and operating conservatively.

Now, in order to fulfill our reorganization obligations and convert to the new program, we must be able to operate our remaining U.S.-built ships free from destructive competition. However, the Subsidy Board's current laissez-faire view of Section 605(c) resulted in recent authorizations of new, "tramp-type" competition, which is already causing us serious damage on Trade Route 18.

Mr. Chairman, this "instant deregulation" will not help the liner industry any more than it would benefit the domestic industry.

Another aspect of Waterman's situation is that, like operators of U.S.-built bulk carriers, Waterman cannot compete with foreign-built vessels for the U.S. flag share of government sponsored cargoes. Due to the very low rates prevailing on many non-reference cargoes, Waterman needs compensatory rates on the preference cargoes to fulfill its obligations under its reorganization plan and to survive as a U.S. flag operator.

For this reason, Waterman requests that the three year waiting period for foreign built ships to carry the United States flag share of government-sponsored cargoes be retained for United States built liners, as it would be for the bulk operators. This is in keeping with the desire of the other operators to compete more effectively with foreign flag operators for commercial cargoes and for the foreign flag share of government-sponsored cargoes.

While it is easy to criticize the 1936 act, Mr. Chairman, please bear in mind that in this decade, its programs have been drastically curtailed. The curtailment of ODS and CDS has thwarted the policies of the 1936 act. Our commercial order book is down to zero, and our ship-building base has been eroded. There must be some incentive to encourage ship-build America, because without it, there poses a real threat, as you have been discussing all morning, to our national security at a time when potential adversities are increasing—excuse me, when potential adversaries are increasing their fleets and building capability.

We ask for the following three amendments to S. 1183, Mr. Chairman.

One is a clarifying amendment to Section 605(c) of the Merchant Marine Act of 1936, to preclude new service in any market unless individual market conditions will support that service and that service will not and does not in practice unreasonably, adversely affect existing U.S. flag operators.

Two is an amendment allowing no service in our markets by any operator receiving subsidy in excess of the service provided in calendar year 1985, without findings under Section 605(c), as we ask that that section be amended herein.

Three is an amendment retaining the three year eligibility requirement for foreign-built U.S. flag vessels to carry the United States flag share of preference cargoes.

Mr. Chairman, Waterman has performed its contractual obligations to the best of its ability, developing and serving its routes and building ships in the United States.

It is only fair that, while the benefits of the new program are being extended to other U.S. flag operators, our investment and contractual interest in our existing service be preserved until we can convert our fleet to operate under the new program.

Thank you, Mr. Chairman.

Senator **Breaux**. Thank you, gentlemen, for your presentations.

Mr. Hearn, what would Waterman do when your ships that are U.S. built outlive their useful life and you are faced with the fact that those ships would have to be replaced?

Mr. **Hearn**. We would hope that by that time, Mr. Chairman, we would be moving into a new building program.

As alluded to in the statement and some of our conversations, we just emerged from a Chapter XI proceeding last June. We had a fairly successful year, but that does not guarantee anything in these trades, as you are so well aware.

We envision upgrading our fleet and getting new ships.

Senator **Breaux**. But do you envision any possible way that you would be able to build or upgrade in a U.S. yard without any kind of construction subsidy and still be competitive?

Mr. **Hearn**. No.

Senator **Breaux**. As I am pointing out, you are not going to be able to compete with foreign built ships in the U.S. That is what you point out.

It is certainly clear that the future of your company is that you are not going to be able to be competitive, even with ODS, if it is a U.S. built ship.

Mr. **Hearn**. No.

What I am saying is that I would hope—and I do not think it is in front of us today, but certainly I think the next speaker, the representative of the shipyards, what he has to do I don't know—but I would hope there would be some situation down the road, certainly for national security, that there would be some incentive by the United States Government for build-America. I don't know how far away that is and I don't know what participation Waterman Steamship Corporation would have in that.

What I am saying to you and to the committee today, Mr. Chairman, is that right now, we cannot compete with the foreign built ships because of the costs of acquisition, because of the diesel engines and because of the costs of operation.

We had a contractual obligation with the United States Government and fulfilled that. We have a contract.

All I am saying is that to keep us whole in this transition period that even the Maritime Administrator spoke of—and I think you brought it up yourself earlier, a conversion period—so that we, who have invested our treasury into building in American yards, and who have an ODS contractual obligation with the United States Government and have lived up to it faithfully, so that we can accommodate our fleet so that it becomes competitive with people who are, if there is no other way of doing it, who have to build in foreign yards to get the benefits of the cheaper built and cheaper operated ship—until we can do that, we are looking for some preservation of our existing, contractual right, which is no ODS operator without Section 605 approval can compete against us on our trade routes.

We do not think that the U.S. Government and the taxpayers are going to throw $300 million at a group of American flag carriers to run anywhere they want around the world, competing against each other, and not providing maybe service to some of these areas that Mr. Rhein talked about.

Senator **Breaux**. But is it not the situation that you are asking us to grandfather in, perhaps—is it simply not working? I mean, even with that, we have a U.S. Merchant Marine. Under those circumstances and those rules that you are asking us to continue, that is simply not working.

Mr. **Hearn**. I am saying that they are not making——

Senator **Breaux**. I mean, your company is in bankruptcy under what you are asking us to continue.

Mr. **Hearn**. Oh, no, we are not in bankruptcy.

Senator **Breaux**. Or just came out of it. But you went through it and you are saying that that situation is so good, please continue it. I don't understand that argument.

Mr. **Hearn**. Well, what I am trying to say is I think everybody agrees that the steamship industry internationally as well as the American industry, has come on hard times because of "over-tonnaging." There are too many ships chasing too much cargo.

Senator **Breaux**. Not in the United States. I mean, we just had the Maritime Administrator talking about the demise of the industry. We have, what, six or seven companies left.

Everything from our perspective is going downhill.

Mr. **Hearn**. Yes, because they have built too many ships. Where you had five or six ships, they bring in a new container ship that carries the same amount of cargo as those ships, supposedly.

Cargo has dried up around the world in the last four or five years, and because of that, there are too many ships chasing too little cargo. I don't think anybody denies that, Mr. Chairman.

To just answer your question, what I am saying is if section 605, which is part of the 1936 act, is adhered to, with the intent that the Congress initiated in complying with it in 1936, to wit, take a look at the trade route, you see what the service is on the trade route, you see if someone else comes in and if he offers too much service, what effect will that have on the existing ODS receiver on that route.

Those things have not failed us. They just have not been properly implemented. That is my contention.

Senator **Breaux**. It just seems, the impression that I am getting is that what you are advocating is to preserve the current law in asking for a grandfathering.

Mr. **Hearn**. No, Mr. Chairman. That is not what I am asking for at all.

What I am asking for is until we have the ability to move over, to be able to invest in foreign built ships, if that is the only way to go, that we have some type of preservation of the contractual obligation that we already have right in existence now with the U.S. Government. As other people who have foreign built ships come in and receive ODS, which they never had before, let's not have that ability hamper us, who are sitting here with legal contracts.

Senator **Breaux**. Okay.

How do you see our bill changing the current test under section 605?

Mr. **Hearn**. I don't see the bill changing it at all.

What I am suggesting is that in your bill, I think section 605 says do this, do this, and do that. I think it has left a little too much to be done or not to be done in the interpretation by those who are supposed to be taking care of it, to wit, the Maritime Administration or the Subsidy Board.

I am saying that the Subsidy Board should go in a little deeper with investigations to make sure there is enough cargo on the route, before they add somebody else, to make sure that by adding somebody else, it will not affect the carrier who is already receiving subsidy on that route.

I think it is more of an implementation, Mr. Chairman, of the intent of Congress under section 605.

Senator BREAUX. Mr. Rhein, you talked in your testimony about the concern about the feeder ships. I am trying to figure out if you have a recommendation of how we ought to address that problem.

Do you have any specific suggestions on what you would recommend needs to be done with regard to companies that operate foreign flag feeder ships to service their main carriers?

Mr. RHEIN. Yes, sir.

There are really, I guess, two issues. One is how do you deal with unsubsidized carriers when they become subsidized. Technically, they would be in violation of Section 804, I believe.

Senator BREAUX. It's section 805.

Mr. RHEIN. The other issue is how do subsidized carriers get freed up from the same restriction in terms of operating a competitive feeder fleet. Our recommendation would be to wipe out the restriction.

Now, I realize that that may not be easy to do. It is totally onerous and noncompetitive and unrealistic in today's trade.

Senator BREAUX. You are not suggesting that they be eligible for ODS subsidy, are you? That was not your suggestion?

Mr. RHEIN. No.

Do you mean as far as feeder ships?

Senator BREAUX. Yes.

Mr. RHEIN. No.

I realize that that is an issue that I am sure will come up. But what you are dealing with in the foreign feeder trades is an entirely different set of circumstances, than you are dealing with in the trans-Pacific or trans-Atlantic, or North-South American and the African trades, where you are dealing with U.S.-foreign trade as the base.

In the feeder trades, the state of the art is a small, self-sustaining diesel powered foreign constructed ship that in many cases flies the flag of one or two of the trading partners, in order to participate in the foreign to foreign trade.

I think we have to recognize that American carriers, be they ODS recipients or not, have every right and should aspire to participate in the foreign to foreign trades, what we call the cross trades, very much like the foreign competition we face carries a tremendous amount of cross trade within our trade route. As a matter of fact, some of our greatest competitors are Europeans who do not carry a stick of their native tonnage.

So it is simply a way of competing efficiently with what the competition really is, and it is not each other.

One of our hopes in supporting your bill is that for once and for all, we can quit competing with the other Americans and can focus on the real enemy, which is the foreign carriers. This is one way in which we will be able to do so.

Senator BREAUX. So your recommendation would be that a subsidized carrier that maintains a foreign feeder line system would be able to compete against other U.S. carriers that also operate foreign feeder lines in the same area?

Mr. RHEIN. That's correct, Senator.

Senator BREAUX. Under current law, they cannot do it if it is another U.S. line that is there—is that correct?

Mr. RHEIN. Well, no. You have to apply for it. In our particular case, we have authority to operate foreign flag feeders in the Thailand and the People's Republic of China trade, simply because, as you point out, there is no competing American service in those trades, American flag service.

Senator BREAUX. There was some discussion by one of the companies about U.S. built companies operating in domestic Jones Act trade, which feel that they would not be able to survive or have great concerns about the viability of their companies if an ODS line was able to come in and compete in that area.

What are your thoughts about any possible ways of protecting that, if it needs to be protected in your opinion, at all?

Mr. RHEIN. Well, first of all, we do not believe it needs to be protected, any more than anybody else in a competitive environment needs to be protected.

The law, as it presently reads, would require an ODS recipient to pay back ODS to the extent that he participates in a domestic trade, and pay back CDS to the extent that his ship was built with subsidy in an American shipyard.

So I fail to understand how a domestic operator could feel put upon by an international carrier refunding money to the government, to the extent that he operates in a domestic trade.

Senator BREAUX. Do you have any comments about the timing of a trade route deregulation process? We have heard suggestions that it should be something—I guess, Mr. Hearn, you were talking about that—there was talk in terms of some type of transition or phase-in period.

What are your thoughts on that?

Mr. RHEIN. From APL's viewpoint, we have no phase-in problems. We are willing to go with the trade route deregulation immediately.

My comments were really directed at what I perceive to be problems on the part of some of the smaller carriers, who may not either be in the trade route that we are in or have invested their entire corporate fortunes in what has been heretofore a somewhat protected trade.

Our trade is the trans-Pacific, and every dog and cat in the world competes in the trans-Pacific. So we are used to that.

But in some of the smaller trades, and I think Mr. Hearn was referring to several of them, carriers like Waterman, Farrell, and even Lykes Lines, to some extent, have focused on those, have spent a great deal of money in getting themselves established, and do have a contract with the government, as I understand it, that implied that there would be some regulation of the U.S. flag competition in that trade.

So this is an issue that is important to them. It is not important to us.

So I would rather leave that to those carriers that feel that that is an issue. It has to be dealt with.

I am just saying that it is something that is not going to go away, Senator, and in order to achieve some semblance of harmony and cooperation among the industry and to get this bill moving rapidly, I think you have to deal with it.

Senator BREAUX. Okay, gentlemen. I appreciate your being with us.

Mr. Hearn, thank you for your suggestions.

Mr. Rhein, thank you for your presentation.

I would like to welcome at this time Mr. John Stocker, who is President of the Shipbuilders Council of America.

Mr. Stocker, we are pleased to have you here today.

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA

Mr. STOCKER. Thank you, Mr. Chairman.

At this time, if you don't mind, I would like to have my statement entered into the record, and I will summarize our points for you here in the next few minutes.

My name is John J. Stocker. I am President of the Suipbuilders Council of America, which is the national trade association representing America's shipbuilders, ship repairers, and manufacturers of marine equipment. You will find that we currently represent well over 94 percent of the total shipbuilding and ship repair workers in the United States.

I appreciate the opportunity to appear before you today to present the views of our organization on Title II of S. 1183, legislation to amend the Merchant Marine Act of 1936. The measure is designed to address the sagging fortunes of the privately owned U.S. flag operating community, especially the liner segment.

The Shipbuilders Council does not object to those portions of Title II which provide subsidized liner operators with increased operating flexibility. However, we have been and remain opposed to the unrestricted "build foreign" authority for subsidized U.S. flag liner operators and the elimination of the three year waiting period for foreign-built U.S. flag liner vessels to transport preference cargo.

For years, the fortunes of the U.S. flag fleet, including the liner operators, were tied to those of U.S. shipyards. However, the enactment of the Omnibus Budget Reconciliation Act in August, 1981, severed this long-standing tie. Specifically, the Congress authorized until September 30, 1983, that an operator receiving or replying for ODS to construct, reconstruct, or acquire its vessels of over 5,000 dead-weight tons in foreign shipyards if the Secretary of Commerce—now Transportation—found and certified in writing that such operator's application for construction differential subsidy would not be approved due to the unavailability of funds in the CDS account. The Reagan Administration has never sought funding for the CDS program.

Prior to the expiration of this temporary authority, the Maritime Administration approved the construction of 36 ships and the conversion of another 13 ships in foreign shipyards.

The present financial status of the U.S. flag liner fleet varies tremendously, and we do not believe that the authority to build abroad has improved that financial status. Indeed, some of those operators with the most pressing need for modern equipment to replace aging assets did not take advantage of the earlier window provided because of their financial condition.

The Subcommittee on Merchant Marine knows the current status of the shipbuilding industry. Mr. Chairman, you know that in the face of the greatest Naval fleet buildup in peacetime, the industry has suffered from dramatic reductions in the number of shipyards and production workers employed in those shipyards, and you mentioned some of those statistics in your opening statement.

The Shipbuilders Council, however, believes that this is now the time and the opportunity to talk about alternative approaches for promotional programs in support of the industry. This is the industry that through six years of intense competition for Navy programs has produced savings of well over $6 billion in that time period, and has also improved its ability to manage and construct in an efficient manner the combatants for the Navy.

However, in commercial shipbuilding, we now think that the focus should be shifting to the international market, and we see that occurring in two ways: one, through negotiation, and the second, through some sort of financial aid program in the event that negotiation fails. We would like tomorrow, during the consideration of Title I, to discuss the issue of negotiation with you. So, this morning I will cover the issue of financial aid.

One way is to rejuvenate Title V of the Merchant Marine Act of 1936. We propose the establishment and adequate funding of a program to export commercial ships for either U.S. or foreign operators. A fund would be created which would provide direct payments to shipyards competing for contracts and would be used to offset foreign price differentials. The government would select the shipyard proposal that would include, among other factors, the lowest percentage of subsidy to cost. Thus, competition would continue to be served while protecting American firms from predatory pricing practices. Shipyards would market their designs worldwide and apply to the government for support.

The actual difference from the old CDS program is that it would offer direct support to shipyards and, importantly, it would not necessarily require direct links with privately owned U.S. flag operators. Such a program would be implemented as an amendment to S. 1183. Indeed, the Council has prepared such an amendment and we have forwarded it to your staff.

Mr. Chairman, Benjamin Franklin said that "we must hang together or else we hang separately." I believe the experience of the last six years has taught the maritime industry the wisdom of those words. I am not recommending the retying of the legal knot between the operators and the shipbuilders. What I am recommending is that we work together so that we all have a better chance for survival in these most desperate of times.

This concludes my prepared remarks. I am ready to answer any questions that you might have.

[The statement follows:]

Statement of John J. Stocker, President, Shipbuilders Council of America

Mr. Chairman, Members of the Subcommittee. I am John J. Stocker, President, Shipbuilders Council of America—the national trade association representing America's shipbuilders, ship repairers, and manufacturers of marine equipment. A membership list is attached. This list will show that 24 companies with 33 facilities are members along with 17 marine equipment manufacturers and four naval architect firms. We represent 94 percent of the total shipbuilding and ship repair workers in the United States.

I appreciate the opportunity to present the view of the Shipbuilders Council on Title II of S. 1183, legislation to amend the Merchant Marine Act of 1936. The measure is designed to address the sagging fortunes of the privately-owned U.S.-flag operating community, especially the liner segment.

Title II would amend the Operating-differential Subsidy (ODS) program authorized by Title VI and the cargo preference law contained in Title IX of the Merchant Marine Act of 1936. First, and foremost, the ODS program would become an entitlement program. In other words, if an operator seeking subsidy satisfied certain objective statutory criteria, the Secretary of Transportation must approve an ODS application and enter into a subsidy contract or amendment to a contract. Second, the program would encompass both bulk and liner vessels engaged in international as well as the foreign commerce of the United States. Third, subsidized U.S.-flag liner operators would receive permanent authority to build or convert vessels in foreign shipyards and the resulting tonnage would be eligible for ODS and the immediate carriage of government-impelled cargoes subject to section 901 of the Act. Finally, subsidized liner operators would be freed from the existing trade route limitations as well as restrictions on providing unsubsidized service with U.S.-flag vessels in international trade.

The Shipbuilders Council does not object to those portions of Title II which provide subsidized liner operators with increased operating flexibility. However, we have been and remain unalterably opposed to the unrestricted build/foreign authority for subsidized U.S.-flag liner operators and the elimination of the three-year waiting period for foreign-built U.S.-flag liner vessels to transport preference cargo.

For years, the fortunes of the U.S.-flag fleet, including the liner operators, were tied to those of U.S. shipyards. However, the enactment of the Omnibus Budget Reconciliation Act in August 1981 severed this long-standing tie. Specifically, the Congress authorized until September 30, 1983 an operator receiving or applying for ODS to construct, reconstruct or acquire its vessels of over 5,000 dwt in foreign shipyards if the Secretary of Commerce (now Transportation) found and certified in writing that such operator's application for Construction-differential Subsidy (CDS) would not be approved due to the unavailability of funds in the CDS account. The Reagan Administration has never sought funding for the CDS program.

Prior to the expiration of this temporary authority, the Maritime Administration approved the construction of 36 ships and the conversion of another 13 ships in foreign shipyards. The major beneficiary of the build/foreign authority was United States Lines, who executed an contract with Daewoo of South Korea to construct 12 jumbo non self-sustaining containerships. In addition, Lykes Bros. Steamship Company and American President Lines acquired four and two foreign-built ships, respectively, pursuant to special authority contained in an amendment to H.J. Res. 413, the Continuing Resolution for FY 1984, enacted in November 1983.

The present financial status of the U.S.-flag liner fleet varies tremendously. USL has filed for protection of creditors under Chapter II of the Federal Bankruptcy Code and is in the process of going out of business. Prudential Lines has followed the same course of action. Farrell Lines and Waterman Steamship Company are far from robust entitles. In fact, Waterman recently emerged from Chapter 11. The same is true concerning the health of Lykes. This means there are only two U.S.-flag liner operators of substance engaged in the foreign trade of the United States who are financially viable, namely, APL and the unsubsidized containership operator Sea-Land Service. The point of my remarks is that the earlier build/foreign window did not measurably aid the subsidized U.S.-flag liner fleet. Indeed, some of those operators with the most pressing need for modern equipment to replace aging assets did not take advantage of the window because of their financial condition.

The Subcommittee on Merchant Marine knows the current status of the shipbuilding industry. Mr. Chairman, you know that in the face of the greatest naval fleet buildup in peacetime, the industry has suffered from dramatic reductions in the number of shipyards and production workers employed in those shipyards. In October 1982, there were 110 shipyards in the United States, according to one Department of the Navy study, employing 112,000 production workers. Today that number has dropped to 74 shipyards employing 85,000 production workers. These reductions amount to a 34 percent drop in the number of shipyards and a 24 percent drop in the number of production workers. All of this occurred in the space of four short years and with a level of spending on Navy shipbuilding programs that has been unprecedented.

Not only has decline marked the industrial structure, but radical shifts have come in the type and composition of firms that comprise the shipbuilding and ship repair industry. Shipbuilding is largely a fabrication process. While it is true that some manufacturing takes place within the confines of the shipyard, it is also true that shipyards require extensive capital plant, waterfront property, and, in these days of increasing technological complexity, a highly trained work force. In other words, the loss of physical space and skilled labor is irreplaceable given the nature of the enterprise.

The members of the Shipbuilders Council have consistently said that the Department of Defense and Department of Transportation need to jointly consider and determine the mobilization requirements for the shipbuilding industry, to publish those findings, and to engage in a dialogue with the shipbuilding community concerning assumptions, data, and conclusions. This Administrtion has performed studies, but never publicly released them, and has refused to establish a dialogue with the industry concerning its long-term future. Their position appears to be that the government will not interfere with the functioning of the marketplace. Other commentators have expressed to shipbuilders the view that dependence on the government needs to be ended. Yet, it is a fact of life that foreign governments routinely intervene in behalf of in their maritime industries because they have made a policy decision that some shipbuilding and ship require capability is a public good.

We believe the case can be made that the shipbuilding and ship repair industry is essential for national security. Once the federal government has determined that the shipbuilding industry needs to be maintain, a number of programs both in terms of near and long-term potential can and must be developed. The Shipbuilders Council believes that the focus for commercial shipbuilding should be the international market. There are methods to facilitate entry into this market. One way is to rejuvenate Title V of the Merchant Marine Act of 1936.

We propose the establishment and adequate funding of a program to export commercial ships for either U.S. or foreign operators. A fund would be created which would provide direct payments to shipyards competing for contracts and would be used to offset foreign price differentials. The government would select the shipyard proposal that would include, among other factors, the lowers percentage of subsidy to cost. Thus, competition would continue to be served, while protecting American firms from predatory pricing practices. Shipyards would market their designs worldwide and apply to the government for support. The actual difference from the old CDS program is that it would offer direct support to shipyards and it would not necessarily require direct links with privately-owned U.S.-flag operators. Such a program would be implemented as an amendment to S. 1183. Indeed, the Council has prepared such an amendment and it is attached to may statement. We have provided subcommittee counsel with a copy of the amendment.

Mr. Chairman, Benjamin Franklin said, "We must hang together, or else we will hang separately." I believe the experience of the last six years has taught the maritime industry the wisdom of those words. I am not recommending the retying of the legal knot between the operators and the shipbuilders. What I am recommending is that we work together so that we all have a better chance for survival in these most desperate of times.

This concludes my prepared remarks. I will attempt to answer any questions you might have.

Senator **Breaux**. Thank you.

Let's have some discussion with regard to the status of the shipyards that you represent.

What about the point that we are doing more work than we have in the past because of the buildup of the Navy, Coast Guard, the repair work that they are doing, that yards have on their books a substantial amount of work that is going to be there for a while, and with the buildup of the Navy and the repair of those ships, that that should be sufficient to keep a shipyard base that is adequate to serve our military needs?

Mr. **Stocker**. Mr. Chairman, in the course of 1986, when we assessed the backlog as it existed in the shipyards, we found at that time that 83 Navy vessels were under contract, and there were four commercial vessels. This compares to the situation in 1976, when there were a total of 155 ships under contract, 78 of which were commercial ships and 77 ships were Naval.

In fact, the number of orders for naval ships that we have seen over the past four or five years have been substantial, and we will not deny that. But when you look at it over the long term, there has been a relatively stable program in the Navy work and a severe dropoff in the commercial work. As a result, the overall base has declined by well over 24 percent in terms of people, and 33 percent in terms of shipyards.

So, despite the level of work that has been provided by the Navy, we have seen a substantial contraction in the base.

Then the next logical question would be how much capability do we need. That issue has been addressed on two separate occasions by the Defense Department over the past four or five years, and in both cases, we were found to be at that point in a minimum capability situation. We believe we do not now meet the minimum requirements for sustaining the armed forces of the United States in case we have to go back into a national emergency or a war

Senator BREAUX. Can you make an argument that U.S. shipyards can compete with a foreign yard in the absence of some type of differential subsidy?

Mr. STOCKER. U.S. shipyards cannot compete in the international arena when we receive no subsidies and our foreign competitors are receiving either direct or indirect aid from their governments.

Senator BREAUX. Some would make the argument that, well, the cost is more, but our ships are better constructed, they have higher technology, they are designed to run more efficiently, they can be manned with fewer man-hours, and, therefore, the price might be more in the short-term, but in the long-term it comes out equal.

Can you make that argument?

Mr. STOCKER. You would have to be able to get adequate information about comparative production costs around the world. I would certainly agree with you that I think, from a technological point of view, we are the finest constructor of technologically complex ships in the world. We can prove that in the case of where you look at a complex Naval combatant and see our performance in that regard.

We believe that we are competitive on a production cost basis because of the improvements that have been made in the base over the past five or six years, and that if we were able to compete on a cost basis in the international arena, we would win our fair share of contracts that would be provided in that particular year.

Senator BREAUX. What you are proposing is a type of construction subsidy that our government would pay. But you would make it eligible for not just U.S.-owned ships or operators. In other words, we would be paying the shipyard a subsidy to construct Japanese vessels, Soviet vessels, or any other vessel. Is that right?

Mr. STOCKER. We would open it up to foreign operators. I am certain in the case of the Soviets, there would be some restrictions that could be applied.

Senator BREAUX. The point I am making in bringing that out is this. If we have a hard time in selling this administration on providing a construction subsidy for U.S. operators, how in the world are we going to do it for foreign operators?

What is the argument that I am supposed to send downtown on that point?

Mr. STOCKER. Our argument is that what we are trying to develop is a market for the export of ships in a similar fashion that we attempt to create markets for the export of agricultural products.

Yes, I would agree with you that, on the surface, you could certainly make a stronger national security argument for linking the production of ships in U.S. shipyards with U.S. flag operators. But we have found over the course of the past five or six years that many of the U.S. flag operators have said to us that they do not want to build ships in U.S. shipyards, and we are simply saying to them you can make that decision, but give us the ability, through some kind of financial aid program, to attempt to meet the price that foreign shipyards are offering for you.

I will give you an example.

APL recently ordered five ships from two German shipyards where the level of subsidy support that was being provided by the Federal Government of Germany is in excess of 55 percent. We were not even permitted an opportunity to look at the specification package and offer price quotes to APL because APL took the position that it would be silly in the face of those levels of subsidy from the German Government.

We would agree with that. But we would like to have seen a situation where we could have depended on some level of support so that we could, in fact, offer operators the opportunity to get quotes from U.S. yards and make a decision on the basis of best price.

Senator BREAUX. Would not the U.S. yards be helped significantly if a program was devised to allow U.S. operators to build foreign and the fact that they would proceed to do that, if there were a requirement that repair and maintenance work on those ships would, in fact, be required to be done in U.S. yards?

Mr. STOCKER. Well certainly that sector of the base that engages in repair and maintenance would be helped by such language, and we would work with you on that. I think our concern is how do you maintain the new construction capability in the face of not having any financial support and being forced to compete against people who do.

Senator BREAUX. The Shipyard Council, how many companies do you have? I am trying to find the number that you mentioned. What was that?

Mr. STOCKER. We represent 24 firms with facilities at 33 locations, 17 marine equipment manufacturers and four Naval architects.

Senator BREAUX. I know that I probably had in coastal Louisiana I don't know how many shipyards that apparently were smaller yards which, I guess, do not belong to the Shipyard Council, is that correct?

You have only yards that are capable of building—what is it, what sized vessels?

Mr. STOCKER. We tend to have the majority of our membership concentrated in constructing and repairing ocean-going vessels. And, of course, most of our people now, because of where the workload is, is concentrating on Naval contracts.

In the State of Louisiana, Avondale is a member, as well as Bell-Textron.

Senator BREAUX. Okay, Mr. Stocker. We want to work with you.

I know of the concern that your clients and members of the Council have. It is a question of coming up with something that is workable and, at the same time, not putting anybody else out of business.

I am acutely aware of the concern that your organization has and want to try to come up with something that will be helpful, not harmful. Hopefully, we can reach that goal and we want to work with you in doing that.

We are going to continue, of course, trying to see to it that we certainly do not let military work slip away, and I include the Coast Guard in that definition. So we will be working on that also.

Mr. STOCKER. We appreciate your support and we would be glad to work with you on any ideas.

Thank you.

Senator BREAUX. Thank you very, very much.

This will conclude our morning session on the legislation. Tomorrow, we will be back at 2:00 o'clock, in the same room, for testimony on Title I of the bill.

Until that time, the subcommittee will stand in recess.

[Whereupon, at 12:17 o'clock, p.m., the subcommittee recessed, to reconvene upon the call of the Chair.]

FOREIGN SHIPPING PRACTICES ACT OF 1987

THURSDAY, MAY 21, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:15 p.m., in room SR-253, Russell Senate Office Building, Hon. John Breaux (chairman of the subcommittee) presiding.

Senator BREAUX. The subcommittee will please come to order. This afternoon we will continue our hearings on the bill S. 1183 which we began yesterday. This afternoon we will be directing our attention to Title I of the bill, and we are pleased to receive the testimony from the panels that we have put together. Senator Stevens.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. For the last three years the U.S. commercial fleet has been struggling to survive in a highly competitive international cargo market. Many companies have not survived the depressed conditions, posing tremendous economic problems in many of our coastal areas. Of equal concern is the adverse impact of a shrinking merchant on our nation's sealift capacity, which is an integral part of our national defense.

It is imperative that U.S.-flag carriers operating in the foreign commerce are allowed to compete on an equal basis with their foreign competitors. S. 1183 attempts to equalize the playing field by providing the FMC with the authority to offset adverse conditions existing in the international maritime trade. We are here today to gain insight into this problem, and I would again like to offer my assistance to Senator Breaux in moving this effort along.

My Alaskan constituency is also experiencing problems in the maritime field. The Government of Canada has recently acted to restrict Alaskan tug and barge companies from conducting commercial cargo destined for the Yukon Territory. This was done notwithstanding the ability of Canadian carriers to haul U.S.-origin goods to Alaska.

An Alaskan company, Lynden Transport, will present testimony today on this problem. I would like to welcome Dave Haugen, Vice President of Lynden, to Washington. His testimony should help to develop a broad understanding of the nagging problems in the maritime field.

Senator BREAUX. We would like to welcome up at this time Mr. Al May, Executive Vice President of American-Flag Ship Operators; George Hearn, Vice President of Waterman; Mr. Peter Finnerty, Vice President of Public Affairs, Sea Land; Mr. Harold Grehan, Senior Vice President of Central Gulf Lines.

[Pause.]

Senator BREAUX. If this panel would not mind too much, I would like to take Mr. Gaughan first because of a prior commitment that he has. We will have Mr. John Gaughan, the Maritime Administrator first.

STATEMENT OF HON. JOHN A. GAUGHAN, ADMINISTRATOR, DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION, ACCOMPANIED BY REGINALD BOURDON, ASSOCIATE ADMINISTRATOR FOR INTERNATIONAL ACTIVITIES AND POLICY

Mr. GAUGHAN. Thank you, Mr. Chairman. I would like to thank the Committee very much for taking me first. We have our annual Maritime Administration Award Ceremony at 3:00 o'clock, Mr. Chairman.

Mr. Chairman and Members of the Subcommittee, I am John Gaughan. I am the Maritime Administrator, and I am accompanied by Mr. Reginald Bourdon, the Associate Administrator for International Activities and Policy.

I am pleased to appear before your Subcommittee this afternoon to present the views of the Administration with respect to Title I of S. 1183, a bill "To amend the Shipping Act of 1984 regarding certain practices of foreign carriers or other persons providing maritime or maritime related services in foreign countries, and for other purposes."

Mr. Chairman, these hearings are most timely, as our carriers continue to confront numerous restrictions on their operations abroad while their foreign competitors encounter no restrictions in the United States. As President Reagan has repeatedly noted, if trade is not fair for all, then trade can be free in name only.

As demonstrated by the actions of the Federal Maritime Commission, as well as the Maritime Administration and other interested executive agencies, one of the major elements of the maritime policy of the United States is to preserve and promote competition in ocean shipping, and to seek the elimination of restricted practices of foreign countries and carriers effecting U.S. flag carriers in those countries.

The Commission's principal statutory weapon to combat unfavorable trade conditions is Section 19(1)(b) of the Merchant Marine Act of 1920, that give it the power to retaliate when an action of a foreign government or commercial entity creates unfavorable shipping conditions in a U.S. bilateral ocean trade.

When proposing sanctions under Section 19, the Commission generally tries to mirror the effect of the foreign restrictions, but most often relies on the ultimate weapon of tariff suspension.

Section 2342 of Title 48 grants the Court of Appeals exclusive jurisdiction to enjoin, set aside, suspend, or determine the validity of all rules, regulations and final orders of the Commission issued pursuant to section 19.

Finally, we understand that the Commission's rules currently require that the Commission postpone or discontinue Section 19 actions if the President informs that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security. No such presidential determination has ever been received.

Without disturbing this existing authority, Title I of the bill would amend the Shipping Act of 1984 by the addition of a new section 23 to be cited as the "Foreign Shipping Practices Act of 1987."

Pursuant to this section, the Commission would be required to investigate all laws, rules, regulations, policies and practices of foreign governments, and practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country that resulted in conditions for U.S. carriers in U.S. trades that do not exist for foreign carriers under U.S. law, or as a result of acts of U.S. carriers, or other persons providing maritime or maritime related services in the United States.

"Maritime related services" are defined to mean intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, and all other activities and services integral to total transportation systems of ocean carriers and their foreign domiciled affiliates on their own and others' behalf.

The Commission would also be authorized to initiate such investigations on its own motion or upon the petition of the parties enumerated in Title I. In this regard, the Commission would be authorized by order to require any person to file with it any periodic or special report, answers to questions, documentary material, or other information which the Commission considered necessary or appropriate.

Whenever there is a disparity in the conditions experienced by U.S. carriers calling in a foreign country and foreign carriers calling in the United States, the Commission would be required to offset such conditions by taking any action it considers necessary and appropriate against foreign carriers who are contributing to, or whose country is a contributing cause to such conditions.

Such action could include limitations on sailings, suspension, in whole or part of any and all tariffs; suspension in whole or in part of the right of a foreign carrier to operate under any agreement filed with the Commission; imposition of other requirements upon such foreign carriers similar to those imposed upon U.S. carriers.

In addition, upon the Commission's request, Customs would be required to refuse clearance to any vessel of a foreign carrier found to be contributing to this disparity in conditions between U.S. and foreign carriers, and the Coast Guard would be required to deny U.S. entry to any such vessel, or to detain it if it was about to depart for another U.S. port.

Any of these actions by the Commission would be final and not subject to judicial review.

Finally, the commission would be required to include the following in its annual report to the Congress: A list of the twenty foreign countries which generated the largest volume of coeanborne liner cargo for that year in bilateral trade with the United States; an analysis of the unfavorable conditions being investigated or existing in foreign countries; actions being taken by the Commission and recommendations for additional legislation to offset such conditions.

Mr. Chairman, as you pointed out in your statement upon the introduction of S. 1183, the Maritime Administration has been active in identifying burdensome practices and barriers on U.S. carriers in a number of foreign countries. We have also been active in attempting to alleviate these barriers. We believe that the accomplishment of the commission, and the actions undertaken by interested executive agencies demonstrates the adequacy of existing authority to deal with foreign restrictions against U.S. carriers.

Mr. Chairman, while we agree with the objectives of Title I, preliminary reading of the bill indicates some problems. Some of our concerns include: Title I does not take into account the existing authority of the Commission under section 19. If clarification of that authority is required, the appropriate means would be amendment of Section 19 of the Merchant Marine Act, 1920.

Title I does not provide for appropriate Presidential direction of actions related to trade.

The scope of proposed Section 23(b) is far from clear and, in particular, the approach of mere "differences" between the United States and foreign practices triggering FMC investigation is objectionable. Application of the bills' investigatory and sanction powers should be based on a finding of unfair or discriminatory treatment towards U.S. flag carriers.

There is no provision for negotiations to eliminate discriminatory practices prior to the application of sanctions.

Finally, we anticipate that because of some of these concerns, Title I could invite retaliatory action from foreign nations.

Although we believe that the existing statutory authorities of the Commission are adequate to address discrimination against U.S. flag carriers, we recognize that clarification of these authorities could well be helpful. The Administration has not completed review of H.R. 1803, but we believe that the approach of that bill might offer some useful concepts in this regard.

Mr. Chairman, that concludes my prepared statement. I will be pleased to answer any questions that you or the members of the Subcommittee may have, and to work with the subcommittee as you finish your work on Title 1.

Senator BREAUX. Thank you very much, Mr. Gaughan for your presentation. Does the bill in any way, or the Title to start off with, in your opinion, speak in any way to cargo preferences or set asides of cargo?

Mr. GAUGHAN. Not in my reading. No, sir.

Senator BREAUX. The idea is to try and strengthen section 19. It has come to the attention of the Committee that section 19 simply needs additional authority as far as strengthening our ability to take action, strengthening our ability to investigate complaints to be involved in it in a stronger way than we currently are looking at it.

Does the Administration, or does MARAD have any problems with the concept of what we are trying to get to?

Mr. GAUGHAN. Mr. Chairman, we do not have any problem with the intent, as I mentioned in my statement. We do feel, and I will leave it to the Federal Maritime Commission to talk on the particulars, that any clarification should be within Section 19.

As someone who has found himself negotiating on behalf of the United States with a number of our trading partners, I can tell you that the specter of Section 19 has certainly had a very positive effect on getting some of the trading partners' attention.

Having said all of that, section 19 was first passed in the Merchant Marine Act of 1920. That is 67 years ago, and the nature of the maritime business had changed, and so if there is clarification of precisely the actions that can be addressed by the Commission and the actions that the Commission can take, that would be very helpful to the efforts that the Executive has underway in those negotiations.

Senator BREAUX. When you are dealing with the companies that MARAD normally deals with, is it ever brought to your attention about unfair trade practices, at least the expression that they are faced with unfair trade practices in X country or Y country? Do they ever bring this to your attention? And what type of complaints do you normally hear?

Mr. GAUGHAN. They do bring them to our attention. I will give you my impression and then ask Mr. Bourdon to expand on it because he has been at the Agency longer than I. The unfair practices and the concerns of the carriers, in my view, have increased in recent years as the effects and the benefits of intermodal technology have really come to the fore. Recently, within the last year and a half, the carriers have brought to my attention problems relating to terminal operation, trucking operation, agency operation, booking cargo and so forth.

We have, having collected that information from carriers and other sources, served as the impetus for the trip that the Department undertook last November to the Far East to begin to bring our concerns to our trading partners. I don't know if Mr. Bourdon would like to expand on that.

Mr. BOURDON. The only thing I would add, Mr. Chairman, is when UNCTAD-type practices have come before us, and they generally would be categorized as those dealing with cargo reservation decrees and things of that sort, when they have come to our attention as in two specific cases that I can name, the Philippines and Korea, generally the executive branch has entered into discussions with these governments to at least secure conditions that would not be detrimental to U.S. flag carriers.

Sometimes these practices will continue, but are made applicable to other countries and not to the United States. This has largely been accomplished through fear of Section 19 reprisal and other measures that the Federal Government has at its disposal.

Senator BREAUX. Let me ask a question about the coordination. It seems to me that we have an awful lot of people dealing with trade matters in our government, the International Trade Commission, the special trade representatives, the Department of State, the Federal Maritime Commission. When we have trade negotiations, and I will ask this to the FMC, it seems to me that maritime trade issues are being handled by people sometimes that do not really have an expertise in this particular area. A special trade representative is not necessarily an expert in maritime trade. The State Department, the same thing.

It would seem to me that we have a rather spread out way of approaching this problem, and what we are trying to do is to say, look, when it comes to maritime trade, this is going to be the key principal agency in our government that is going to be involved in that.

How do we coordinate all of these matters of investigations currently with regard to maritime trade?

Mr. GAUGHAN. Mr. Chairman, there exists within the executive a group called the Interagency Maritime Policy Group. IMPG is its initials. It is chaired by the Department of Transportation, and it is made up of the agencies that typically would be involved, the Department of State, Department of Commerce, Department of Justice in some cases.

Senator BREAUX. I get the impression that it is not that active a group.

Mr. GAUGHAN. Sometimes, in my own personal opinion, it may be too active.

Senator BREAUX. It is not on the tip of our fingers as to what it is even.

Mr. GAUGHAN. I refer to it as IMPG. I think there is a coordination process that goes on that, at least recently, has recognized that the Maritime Administration should and does have the responsibility to conduct the negotiations as they relate to maritime matters. We just recently concluded talks with the Koreans that were chaired by myself.

That is not to say that there are not other talks that go on in trade and economic matters that are not shared by ourselves, but have representatives from the Maritime Administration as part of the delegations.

Senator BREAUX. What is the situation currently with Korea as far as equal treatment when it comes to maritime trade?

Mr. GAUGHAN. The situation is better than it was in November. It is still not entirely resolved, Mr. Chairman. I will give you, if I could, some examples. Korean law requires that foreign companies be represented by a 100 percent wholely owned Korean agent.

That, at the present time, does not allow for the establishment of branch office by U.S. carriers where they can conduct their own marketing, booking of cargo, arrangements for transportation and so forth. That comes about as a result of the Republic of Korea's laws on investment.

That was the situation and remains the situation today, but as the result of our recent talks with them, the Korean Government has agreed to undertake the necessary changes to their internal law to allow the establishment of branch offices by U.S. carriers.

Senator BREAUX. In those talks what role did FMC play? I am going to ask them that question.

Mr. GAUGHAN. The FMC did not play a role in the direct talks. They have not been part of——

Senator BREAUX. Was that not the same situation with regard to the United States and our meetings with Taiwan and the United States? I notice that Taiwan apparently was complaining about the FMC and doing an investigation.

Mr. **Gaughan**. The backdrop to all of these talks have been the beginnings of a factfinding investigation by the FMC, so-called Section 15 investigation, which lead to—and they can speak more articulately about it—but if that is developed the information to them makes a determination as to whether they should proceed with a Section 19 investigation.

Senator **Breaux**. Someone else makes a determination as to whether they should be proceeding?

Mr. **Gaughan**. No. It is their determination, sir, but it is a two step process. It is not—The FMC does not go directly into a Section 19.

Senator **Breaux**. What I am finding and by the testimony is what I was afraid existed, and that is the fact that we've got State Department that weighs in, we've got STR that weighs in, we have MARAD that is involved in the discussions, and sometimes FMC is there and sometimes they are not.

What we are trying to create in the legislation is that we are going to have a part of our government looking at maritime trade practices, and it ought to be clearly designated who it is going to be. There ought to be a process that Taiwan knows if they are engaging in unfair trade practices relating to the maritime, that it is going to be the FMC that is going to be handling it.

I am fearful that what countries do, and they know our system very well, they have lawyers all over Washington that represent their legitimate interest, but if they see they are being investigated by one agency, they are going to use their political leverage at state, or at MARAD, or with the STR, or with some other bureau that may be a little bit more pleasing to their viewpoint of how the world operates.

That is why I think this legislation is important. It is going to clearly establish that in maritime matters FMC is it. Do not go talk to anybody else. Do not go lobbying another department. This is where it is going to be done or not be done. You make your case or your lose your case, but you have a strengthened procedure and here is where it is going to be. Is that concept off the wall?

Mr. **Gaughan**. Mr. Chairman, I would never say any concept of yours is off the wall. What I am about to tell you you may think is off the wall. As the executive responsible for conducting foreign relations and all, I have found it extremely helpful not to have as part of my delegation, but to have the Federal Maritime Commission as, quote, "an independent regulatory Commission," which is not directly subject to the executive to be able to say to whomever I am negotiating with we do not have any control over these people. They have specific responsibilities. Unless you open your markets, you are liable to have a very harsh penalty come down which can be avoided and not disrupt the trade by negotiating in good faith.

In our visits last November, quite frankly, we used the presence of the FMC as an independent agency and the interest of the Congress I think very much to good effect to get the attention of our trading partners that if they thought they could just stonewall the executive, that the Congress was watching, and there was, in fact, this independent agency that was also there with particular power.

I would not suggest necessarily changing that arrangement because the President does have clear authority and responsibility for carrying out those types of international negotiations.

Senator **Breaux**. Does MARAD, when you are involved in negotiations to improve shipping practices and the United States and another country, have the authority currently to say, after you have reviewed a situation, that this is really a terrible case of unfair trade from the maritime standpoint? After you have seen that, do you have the authority, and, in fact, do you ever refer those instances that you have become aware of to the FMC?

Mr. **Gaughan**. It is not necessarily a question of authority, but we have communicated the full report of what our findings were in our trip to the Federal Maritime Commission. We do, under Section 19; the Executive can trigger a Section 19 proceeding. I have not yet during my tenure made a request to trigger Section 19. At the same time, the FMC has stepped out and taken actions under this Section 15, information gathering, on Taiwan, Korea, the Peoples Republic of China, and Japan, all of which we raised concerns.

Senator **Breaux**. From your experience in the business, Mr. Gaughan, can you identify in general countries, if their maritime trade practices were, through their channels, made similar to ours, that the U.S. maritime industry could benefit from those changes?

Are we talking about one country that we have a problem with? Are we talking about five? How big is the problem as to how many countries, in your opinion, presently have policies, or practices, or rules, or regulations for that matter, that inhibit the maritime trade in manners or ways in which our country does not?

Mr. **Gaughan**. Mr. Chairman, the reason for my conferring, I am not sure that—there are certainly some very clearly identifiable ones. We have talked about four already.

But if you get into the UNCTAD code situation, there are a number of countries that have signed up for that, but that may not impact on our bilateral trade. But there are in fact rules or regulations or tax treatment or whatever that are there that in a broad sense are different and have restrictions on them, that we would have a problem with.

Senator **Breaux**. Well, do you think the House report is pretty much on target? I mean, they have got four or five pages of nothing but countries that are listed with practices that they have reviewed and said really are unfair trade practices for the maritime industry.

I mean, are they in the ballpark with what the House is saying in their report?

Mr. **Gaughan**. Mr. Chairman, I have not actually seen that report, but I have no reason to think that it is not accurate.

Senator **Breaux**. Okay. In other words, you would agree if someone said it is a hell of a problem that is pretty pervasive throughout the world?

Mr. **Gaughan**. Yes, sir.

Senator **Breaux**. Okay.

Well, we thank you for being here. We have some questions that are going to be submitted to MARAD, that we would like you to respond to.

And I think we can agree that some additional changes could be helpful, and that we may differ on where they should be placed. I really have no problems amending Title 19 or the Merchant Marine Act of 1984. It does not matter. I am just trying to get it on the books somewhere.

And I am pleased to have you here again.

Mr. GAUGHAN. Mr. Chairman, I would like to close by reiterating that we share that goal, and that we are prepared to the extent that the Committee desires to offer our comments on any amendments or changes that you would make as we go along.

Thank you very much.

Senator BREAUX. Thank you.

[The following information was subsequently received for the record:]

QUESTION OF SENATOR INOUYE AND THE ANSWER

Question. Since foreign-built ships operating with subsidy will have the cost structure and flexibility to compete with foreign-flag operators, should we protect the markets of those who are operating U.S.-built fleets under the 1936 Act until they can convert to the new program?

Answer. Subsidized foreign-trade, general-cargo ships built under the Merchant Marine Act, 1936, either were constructed in the United States with the benefit of Construction-Differential Subsidy, Federal ship financing guarantees, and tax-deferred capital construction funds, or were constructed abroad under the authority of section 615 of the Act. Therefore, the capital cost structure for these ships is substantially the same as it would be for ships acquired in the world market at the time the U.S.-flag ships were contracted for. Furthermore, the recent rulemaking consolidating essential trade routes into trade areas for subsidized operators provides a suitable framework for both operating flexibility and regulation of entry into general service areas. We do not believe that further market-protection schemes for subsidized operators in the foreign trade are necessary or appropriate.

QUESTIONS OF SENATOR BREAUX AND THE ANSWERS

Question 1. (a) Is the thrust of your testimony that any new ODS contracts or amended contracts cannot create the same kind of obligation for the federal government, that is created under the current law?

(b) If it is, would you suggest an alternative? Time of course, is of the essence, so it would be helpful to have it within a week.

Answer. (a) The point I tried to make during my testimony is that the expanded ODS program envisioned by Title II of S. 1183, must also contain incentives for cost reductions that will result in overall program costs approximating those under the current program. We are all aware of the budget constraints that we face now and in the future. For this reason, we believe that any ODS reform must result in Federal expenditures that are fiscally responsible.

(b) As I noted during my testimony, the Administration has been considering a number of reform measures that would promote the competitiveness of our fleet and, concurrently, maintain Federal obligations at a responsible level. We sent you a concept paper on July 6, and implementing legislation will be forthcoming shortly.

Question 2. On one hand, I am encouraged by your statement that the Administration is considering specific proposals for reform of the promotional program for our liner flags.

On the other hand, this is what MARAD said in the last Congress, and nothing has been forthcoming.

Answer. The Administration released its concept paper on July 6. A copy is attached for inclusion in the record.[1] Implementing legislation will be forthcoming shortly.

Question 3. You state that the bill should provide for incentives that will generate reductions in the levels and costs of subsidized manning. Doesn't MARAD have some discretion under the current ODS law, for example Section 603?

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[1] The copy was not reproducible.

Answer. Under the current law, we have only limited discretion to limit the levels and costs of subsidized manning. Section 603 of the Act provides the opportunity to set subsidized manning levels prior to the award of a contract for the construction or reconstruction of a vessel and at no other time. The only opportunity we have to modify subsidized manning levels on existing subsidized vessels is in the event ownership of the vessels changes hands or such vessels are bareboat chartered to another subsidized operator. Presumably, we would have the opportunity to negotiate subsidized manning levels for new contractors who qualify for the ODS program under Title II of S. 1183.

In the area of wage costs, we have no discretion. Section 603 provides that we must accept any costs for subsidy purposes that are negotiated through collective bargaining or other agreement, unless there is mutual agreement to a lower level.

Question 4. 1. MARAD has said that:

It wants U.S. liner vessels to be more competitive in international liner shipping without subsidy to the maximum extent possible.

Its trade route de-regulation would not reduce the amount of ODS payments per vessel.

Foreign competitors are increasingly employing seafarers from low wage countries, thus increasing the wage cost differential between U.S.-flag vessels and their competitors.

Wage cost differential makes about 90% of ODS payments. And it is a fact that:

Sea-Land, our largest unsubsidized liner operator has had a series of quarterly operating losses.

Without ODS, APL would have sustained an operating loss in the last quarter.

In view of the foregoing is it realistic to expect any U.S.-flag liner operator to be more competitive without ODS to make up the wage cost differentials.

Answer. The uncompetitiveness of the U.S.-flag liner fleet and its poor operating results is the function of many factors. One factor has been the depressed freight rates due to severe overtonnaging. This was highlighted by Sealand's recently announced quarterly profit, which it attributed to higher freight rates.

Another factor contributing to the uncompetitiveness of the U.S.-flag liner fleet is its high cost structure, a problem that the ODS program has tended to exacerbate. The significant differences in the wage and benefits packages on subsidized and unsubsidized ships is evidence of this problem. We believe that any ODS reform effort must address this high cost structure through manning and wage reductions that will improve the competitive position of our fleet.

Question 5. (a) Do you agree that to strengthen the U.S. merchant marine Title II should provide an opportunity for all U.S. liners to become more competitive; and do you believe that Title II, as drafted does so?

(b) Do you agree that to strengthen our merchant marine nothing in Title II should make it possible for subsidized operators to threaten the economic viability of our Jones Act fleet; and, do you believe that, as drafted, Title II adequately protects our domestic fleet?

(c) If the purpose of Title II is to strengthen the U.S. merchant marine, would it be self-defeating if we enacted selected parts of Title II which would benefit some segments, but not provide for or harm others?

Answer. (a) The July 6 concept paper states that we believe that currently unsubsidized U.S.-flag operators should have a one-time, one-year opportunity to apply for ODS.

Title II of S. 1183 contains a number of features that will improve the competitive stance of our fleet. We support the grant of worldwide ship acquisition authority, the eligibility of foreign built U.S.-flag liner vessels to carry preference cargoes, and the concept of increased operating flexibility. We believe, however, that more changes are necessary. We must provide additional incentives to achieve cost efficiencies in the U.S.-flag fleet and maximize the effectiveness of the Government's investment. Title II, as now drafted, does not provide for all of the reforms that must be undertaken to achieve those goals and revitalize the fleet.

(b) The administration has supported the Jones Act fleet, and we agree with the approach taken in Title II to afford protection of the fleet. Title II maintains the provisions of section 805(a) of the Act, and that regard, adequately protects the domestic fleet.

(c) We believe that insofar as possible Title II should be evenhanded in its approach. Overall, however, the health of the industry as a whole must be the primary concern of the legislation. To achieve that goal, we must be prepared to weigh the overall beneficial impact of any reform legislation against parochial interests that may view certain features of a reform bill as harmful.

Question 6. (a) Do you believe the present number and mix of the active U.S. liner fleet and its crews is adequate to ensure that it carries a "substantial portion" of our international cargo; and that it will have sufficient manpower and vessels to meet our needs in time of national emergency?

(b) If not, how many more liner vessels and seafarers do we need?

(c) Would we get them under Title II?

Answer. (a) The most recent trade statistics (November 1986) show that U.S.-flag vessels carried 15.5 percent of U.S. liner exports and 19.1 percent of U.S. liner imports. The Department of Defense Sealift Study indicated that dry cargo shipping capacity would be marginally inadequate to meet defense mobility requirements in the 1988 time frame. The Maritime Administration Economic Support Shipping study showed that the U.S.-flag fleet would have to be supplemented to move cargoes essential to a 1990 wartime economy. Using worst case assumptions, the Navy Merchant Marine Manpower Study has projected a shortage in merchant seamen to meet a national emergency.

(b) In view of the fact that the Sealift Study presently is being updated in the Revised Intertheater Mobility Study (RIMS), I would hesitate to identify a specific sealife shortage at the present time. The RIMS study should give us a clear indication of requirements versus available capacity. The Navy manpower study indicated that an additional 8,126 seamen, including 1,295 stewards, would be needed by 1992. We anticipate that, as a result of the RIMS study, the projected shortfall in seafarers also will be adjusted.

(c) We do not believe that Title II as currently drafted would provide sufficient incentive to achieve significant expansion of the operating fleet. Consequently, we would not expect to see a significant increase in the number of available seafarers. We do believe, however, that our ODS reform package would help prevent a further decline in the number of U.S.-flag lines and U.S. seamen.

Question 7. Since approximately 90% of ODS payments are attributable to the wage differential should new or amended ODS contracts under Title II be limited to that differential?

Answer. We believe that new or amended ODS contracts should be limited to wage differential subsidy. As carriers take advantage of worldwide ship acquisition authority and modernize their fleets, the relatively small differentials in non-wage items become a minor competitive factor. You should be aware that under the current program, a substantial number of subsidized vessels operate with ODS for wages only.

Question 8. If Title II were to result in the ultimate demise of a smaller subsidized carrier such as Waterman, wouldn't the government be at cross purpose inasmuch as it would be paying subsidy to Waterman while Waterman was "going under"? Also, the government would have to make good any Title XI guarantees on the Waterman vessels?

Answer. It is not likely that Title II would directly result in the demise of an existing, albeit smaller, carrier. The Government does not guarantee the profit or success of an operator by paying subsidy to that operator. The payment of ODS to an operator is meant to give that operator a reasonable chance to compete on an even cost basis with foreign-flag competitors. Reasonable levels of flexibility and competition should exist among U.S.-flag carriers.

Obviously, if such an existing operator failed, MARAD would have to make good the Title XI guarantees.

Question 9. (a) Is it MARAD's view that its rule deregulating trade routes would not be an inefficient use of federal subsidy funds even though one subsidized operator will compete against another?

(b) Would MARAD's reasoning also apply to trade route deregulation under Title II?

Answer. (a) It is our view that widening the definition of trade routes would not be an inefficient use of Federal subsidy because of the 605(c) process, wherein an existing operator may challenge the award of new subsidy contracts in direct competition with its own. If it is proven that service in the trade in question is inadequate, then the new subsidy contract merely allows additional U.S.-flag vessels to compete with foreign carriers in the particular trade as a supplement to the existing U.S.-flag service. If the existing service is shown to be adequate, the Secretary cannot issue the new subsidy contract for that trade and the existing operator is protected.

(b) Yes, it would.

Question 10. As I understand it, the average ODS payment per vessel is about $3.7 million. The new vessels which would come into service under Title II would have lower manning levels, and would reduce that $3.7 million per vessel to about $2 million, is that correct?

Answer. At the present time, the average ODS payment per liner vessel is about $3.4 million. Assuming a manning level of 21 for new vessels entering subsidized service under Title II of S. 1183, the average ODS payment for vessels would range from $2.6 to $2.8 million, depending on foreign competition in the trades served by the vessels.

Question 11. Proponents of trade route deregulation maintain that the distribution of ocean transportation services is best when left to the market place as "deregulation of domestic transportation modes has generally shown."

On the other hand, there are those that maintain that route deregulation for our domestic airlines has caused bankruptcies and loss of service.

What will happen to economically unattractive trade routes if trade routes are deregulated?

Answer. With or without deregulation, economically unattractive trade routes would not be directly served over the long term. Trade routes that do not economically justify direct servive from the U.S. are generally served by feeder vessels, or through connecting carrier agreements (facilitated by Shippng Act of 1984).

The exisitng regulatory system has not prevented bankruptcies in the U.S.-flag liner industry. Indeed, we believe the elements of the existing system have directly led to a significant decline in the U.S. liner fleet.

Question 12. In a March 25 article, the Asian Wall Street Journal reported that the Korean Government was planning to rescue its biggest shipping lines by helping them to pay their debts. That same article noted that "the Japanese had to bail out their shippng industry".

And, of course, the West German government gave one of its shipyards substantial subsidies to enable it to out bid Japan and Korea for construction of several U.S.-flag vessels.

That, in miniature, is the international picture. How can we expect our vessels to compete, if as a government we refuse to recognize this reaiity.

Answer. I have stated publicly on several occasions my belief as Maritime Administrator that the U.S. merchant marine cannot compete effectively in the foreign trade without subsidy. However, we do not believe that large-scale direct financial support will enhance the shipping industry's competitive capabilities. The Administration has encouraged our operators to develop initiatives to improve their competitiveness, and for our part we are making every effort to remove foreign measures and practices which restrict our carriers' operations.

Question 13. (a) What does it cost the government per year for each ship it maintains in the National Defense Reserve Fleet; and how many more does it intend to acquire, at what price?

(b) Would enactment of Title II reduce that cost by adding to the active fleet, and also ensuring the availability of more seafarers in time of national emergency.

Answer. There currently are 323 vessels in the National Defense Reserve Fleet (NDRF). Of these, 240 ships have a maintenance cost of about $10,000 annually per ship. The remaining vessels, 83 Ready Reserve Force (RRF) ships, were maintained during fiscal year 1987 at an average annual cost of approximately $410,000 per vessel. Department of Defense (DOD) plans call for the acquisition of 33 additional vessels for the RRF by 1992. Acquisitions for the RRF in 1986 averaged $15.7 million per ship, in RRF ready condition, and $1.7 million per ship for candidates to be converted to crane ships and upgraded to RRF condition. It is estimated that the cost of future acquisitions could reach $12 or $15 million per ship.

We do not believe that Title II of S. 1183, as written, would provide sufficient incentive to achieve significant expansion of the operating fleet, but it might keep in commercial operation vessels that otherwise would have to be acquired for the NDRF. We would expect that DOD would continue to acquire at least some additional ships for the RRF, even if Title II were enacted. We do not foresee that the present number of ships in the RRF would be reduced or that there would be a reduction in maintenance costs for RRF vessels. The sealift mobilization plans that determine the number of vessels needed for the RRF assume vessels in the active fleet are available already. Hence, if title II simply maintains the status quo (which we believe it would), RRF plans for future acquisitions would not change. To the extent some vessels remained in commercial operation and did not have to be acquired for the RRF, there would be no loss of those U.S. seafarers.

Question 14. Under Title II an ODS operator would still be prohibited from having foreign affiliations in trades where it would be competing with another U.S. operator. The reason, of course, is that the purpose of the ODS program is to enable our operators to compete with foreign carriers.

Is that reasoning still sound?

Answer. We believe that the Section 804 provisions must be changed. An important element of ODS reform is to allow U.S.-flag liner carriers to own, operate, or otherwise affiliate with foreign flag feeder services that operate between foreign ports. Prohibiting or limiting such arrangements would place U.S. liner operators at a considerable disadvantage against foreign-flag operators who are not burdened by such limitations.

Question 15. (a) Do you agree that the reduction in U.S. shipbuilding capacity will have an effect on the adequacy of our shipyard mobilization base?

(b) I understand the Navy is doing an analysis which will reevaluate current U.S. shipbuilding capability under a global war scenario, and that study is due this month. Are you participating in that study; and do you know if it will be published this month?

(c) Is any analysis being done with respect to a regional conflict scenario, such as Vietnam?

(d) What chance does this study have, given the Administration's position that—no CDS; no expansion of ODS and Cargo preference; and elimination of the Title XI program.

Answer. (a) Recent joint DOD/DOT shipyard mobilization studies indicate the U.S. shipbuilding capacity is marginally adequate at the present time.

(b) It is assumed that this question refers to production base analysis work being conducted by the Navy. MARAD is participating only to the extent of some staff support. Staff assistance relates to industry information that MARAD monitors on an on-going basis. MARAD does not know when the study is due to be completed or if it will be released. It is recommended that the Department of Navy be contacted on this matter.

(c) MARAD has not undertaken such a study, and we are unaware of any such study at the present time.

(d) The Administration's position should not affect the outcome of the only study we are aware of, the Navy study mentioned above.

Senator BREAUX. I would like to welcome at this time the Chairman of the Federal Maritime Commission, the Honorable Ed Hickey. Ed, if you would come on up and bring any colleagues that you have with you, we would be pleased to receive your testimony.

STATEMENT OF HON. EDWARD V. HICKEY, JR., CHAIRMAN, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY ROBERT D. BOURGOIN, GENERAL COUNSEL

Mr. HICKEY. Good afternoon, Mr. Chairman. Mr. Chairman and members of the subcommittee; it is a pleasure to appear before you to present the views of the Federal Maritime Commission on Title I of S. 1183, the Foreign Shipping Practices Act of 1987. Appearing with me today is Robert D. Bourgoin, the Commission's General Counsel.

With your permission, I would like to submit my formal statement for the record and briefly summarize it.

Senator BREAUX. Without objection.

Mr. HICKEY. Title I provides the Commission with an additional tool to address practices of foreign governments, carriers and others that unfairly disadvantage the United States merchant marine. It sets forth a swift process and provides exacting remedies based solely on whether conditions exist in foreign countries for U.S.-flag carriers that do not exist in this country for carriers of the foreign country.

In many respects, Title I complements the Commission's existing authority under section 19(1)(b) of the Merchant Marine Act of 1920, which permits the Commission to retaliate when the actions of a foreign government or carrier create conditions unfavorable to shipping in a United States bilateral trade.

Some have questioned why the Commission has not proceeded against each and every practice of foreign countries which may disadvantage U.S.-flag carriers under our section 19 authority. Let me emphasize that the Commission has never been reluctant or lacked aggressiveness in its use of section 19 against unfair government practices.

However, in many instances no one is complaining to the Commission about the practice. In fact, the Commission is sometimes asked by the carriers affected by the practice not to get involved in these situations for fear of retaliation by the foreign governments in question.

Other times, the affected carriers would prefer to try to resolve the problem created by a foreign government practice either diplomatically or commercially, or are convinced that the problem is not of sufficient magnitude to warrant government intervention.

Another reason for not rushing to judgment is that the practice may be the subject of ongoing diplomatic negotiations which may offer some hope for relief. However, this does not mean that the Commission will refuse to entertain a section 19 action if the practice is the subject of such negotiations.

Title I of S. 1183 does appear to have certain advantages over section 19. First, it addresses practices of other persons providing maritime or maritime-related services in a foreign country.

Second, section 23(d) provides a statutory exemption from the Freedom of Information Act. This confidentiality could serve to make sensitive information more readily available to the Commission.

Finally, Title I may permit the Commission to move even more expeditiously against the subject conditions. It would allow the Commission to go forward on a lesser record and without the participation of affected carriers.

In implementing Title I, the Commission would issue blanket information requests to carriers involved in our trades. Once the Commission found the existence of foreign conditions, it would then determine whether comparable conditions existed in this country by questioning appropriate agencies.

Prior to taking any action against foreign carriers, the Commission would provide interested or affected persons some opportunity to be heard. This procedure need not be a full oral or evidentiary hearing with the right of cross-examination in all cases, but would at least provide some opportunity for comment consistent with fundamental notions of due process.

Mr. Chairman, although Title I could be implemented as drafted, there are areas where we believe that it could be improved to make it more effective and less subject to challenge.

As presently written, section 23(b) merely requires the existence of a condition that does not exist in this country. The condition could be good, bad or indifferent, as long as it is different.

The subcommittee may wish to consider modifying this particular section so that it only concerns itself with conditions which disadvantage or are unfavorable to U.S.-flag carriers.

The bill also permits the Commission to act without any hearing. Although I have indicated that in practice the Commission would probably accord some opportunity for comment, it might make the bill more defensible if a right to be heard were expressly included in section 23(e).

Section 23(h) states that actions of the Commission shall be final and not subject to judicial review. This provision may raise constitutional concerns. A right to judicial review would be consistent with the treatment of all other Commission actions under the Shipping Act of 1984 which S. 1183 would amend.

The Commission also has a number of technical suggestions concerning the bill which I am submitting for the record as part of this testimony. I also would be willing to provide any further assistance that you may desire.

I thank you for this opportunity to comment on S.1183 and would be pleased to answer any questions that you might have.

Senator BREAUX. Thank you very much, Mr. Hickey, for your presentation and for working with us.

Let me ask you the question that I explored with MARAD, and that is the ability of the FMC as an independent type of Commission to operate unfettered or uninterfered with by other agencies of our government—the Special Trade Rep or the Department of State or what have you.

Have there ever been occasions when you are looking into a questionable practice by another country that you would get some inquiry from the State Department saying, what in the hell are you doing messing in this area? Or do they pretty much leave you alone?

Mr. HICKEY. No, I would say that they normally leave us alone. The procedure that we have instituted at the Commission, Mr. Chairman, is that when recognize or it is brought to our attention that certain practices are occurring in a particular trade, we ask as a matter of routine that the State Department try to resolve the issue diplomatically. We usually ask them to do it within a certain time frame, 30 days, 45 days, 60 days. And we set forth what our concerns are and what the ongoing offenses or practices are.

Senator BREAUX. So let me interrupt you on that. In other words, if you become aware of a practice that may be considered to be an unfair trade practice, under your procedures the first thing you do is contact the State Department?

Mr. HICKEY. We do this routinely. We ask them to resolve these diplomatically.

However, in that process we have also entered into our own investigations and even under some circumstances invoked the use of section 19, simultaneously with the efforts of what the State Department might be doing or might not be doing. And the same thing is true with the Department of Transportation.

So we have never felt that we have been impeded or abused by people attempting to influence what we are required to do by law.

Senator BREAUX. Do you feel that you are properly brought into the discussions in these cases, or have we seen in some examples, of the Taiwanese case, where apparently the FMC was not even involved in the discussions about the unfair trade practice?

Mr. HICKEY. Well, in that particular instance—and there are other instances—we have to be very circumspect about our participation in those discussions, because the Federal Maritime Commission sitting as a body does have a quasi-judicial role.

So it would be improper in many instances for us to participate in negotiations as an agency whereby the Commission sitting as a body would have to in fact be hearing a case and rendering a vote and a decision ultimately as to what the sanctions might be.

Senator BREAUX. How would our legislation change that from the standpoint of being a judicial judge, if you will, as opposed to an investigator?

Mr. HICKEY. I do not believe it would change it in any fashion, sir.

Senator BREAUX. Would it not be a procedure that would be established by our legislation that would allow you to make then the investigation and then make the final determination as—it is not going to go to court, I would take it, after you have made your final decision?

Mr. HICKEY. Well, if the General Counsel might be permitted to address the judicial aspects of it.

Mr. BOURGOIN. Senator, I do not see S. 1183 as encompassing a different procedure ultimately than does section 19. I think we would generally follow the same type of procedure, allowing some opportunity for comment and then making a decision on whatever record may be before the Commission at the time. Allowing affected parties the opportunity at least to be heard—and we are not talking here about oral evidentiary hearings, but rather possibly a notice and comment or rulemaking type of procedure—would the Commission's job of defending the action in the court a much easier one.

Senator BREAUX. Would you not think that there would be changes in the way the Administrative Procedures Act would be applicable under the bill, as opposed to your current set of circumstances?

Mr. BOURGOIN. Well, the one thing that the bill does do which is in a way of some concern to us constitutionally is that it precludes any judicial review of a Commission action. There is a very strong presumption that the courts will apply in matters involving judicial review, and they will usually go to great lengths to find a reason to review an agency action. There is some very strong language here that the court would have to overcome. I do not know what the result would be.

Senator BREAUX. Let me ask the question, then, that after you have brought in the State Department on an alleged complaint of unfairness, you say that you do not really participate in the negotiations, but you are doing an investigation; that you do not wish, nor do you feel that you need, to be involved in dealing directly with the offending country as a negotiator, but you see your role as basically one who is going to investigate and make a determination?

Mr. HICKEY. Our inclination is to be very protective of our independence, because there is a total inability in my view for the State Department or anybody else to negotiate away the ultimate effects of what the Commission could accomplish.

We do this with a great degree of independence. Namely, we can conduct the investigation at the same time they can be negotiating or indicating to some of these foreign countries that, if you persist in these actions, the penalty that would be paid is something that we necessarily cannot prevent as an agency of the Executive Branch or a Department of the Executive Branch.

Senator **Breaux**. Would there be any changes in your view of the items that would be eligible for you to consider as unfair trade practices under the legislation as opposed to what you consider now?

Mr. **Hickey**. Well, I believe it goes beyond what currently exists, actions by foreign governments and carriers, by including practices of other foreign entities. So I believe it expands the scope of what we can look into.

Senator **Breaux**. Is there any area that the legislation would not allow you to look at under the legislation that you would think perhaps would be worthwhile having the authority to look into?

Mr. **Bourgoin**. There is one area that might need some clarification, since the question has come up and we do not have a ready answer for it. In the event that this bill should become law, it is not clear how far the bill intends the Commission to go in terms of marine or maritime-related services. For example, would the Commission be expected to address conditions created by railroad and motor carriers located abroad, to the extent that they perform part of the intermodal movement or transportation of cargo?

Senator **Breaux**. Well, we certainly want to have the FMC to have clear authority to look at the intermodal transportation within a country after it reaches the port. Is there any doubt that the legislation as currently drafted would give you that authority?

Mr. **Bourgoin**. I think the legislation as currently drafted is broad enough to allow it to be interpreted that way. But if it is your intention or the intention of the Subcommittee to have the Commission consider the activities of those entities, it might be helpful to have that point clarified.

Senator **Breaux**. What about labor practices of another country?

Mr. **Bourgoin**. I am sorry, sir?

Senator **Breaux**. What about labor practices of another country? Would that be an item that would be eligible to be considered? And I am wondering what type of standard?

Mr. **Bourgoin**. I think the legislation is broad enough to include those.

Senator **Breaux**. Have those items ever been looked at by FMC before?

Mr. **Bourgoin**. No, sir.

Senator **Breaux**. How about intermodal connections or lack thereof?

Mr. **Bourgoin**. Yes, sir.

Mr. **Hickey**. Currently we have some ongoing investigations before us. I think those countries were mentioned in previous testimony.

Senator **Breaux**. You mentioned in your testimony about the Freedom of Information Act. Would you give the committee a little bit more discussion on how you think the bill perhaps may improve upon your ability to find evidence, facts and information that you currently may not have the ability to get to?

Mr. **Hickey**. My view is that the confidentiality aspects of the bill would encourage people to come forward with information and testimony. As it exists today, there is a great deal of reluctance to do this for fear of retaliation on the part of foreign governments against carriers, shippers, what have you.

This in my view would be a tremendous aid in identifing these practices. As I indicated earlier in my testimony, sometimes there is a great deal of reluctance to come forward.

This would be extremely helpful, and I think that it would be in the interest of all to have this type of protection.

Senator **Breaux**. Does the Commission feel that the manner in which it is set up in the legislation adequately protects, say, some shipper or some operator from being able to provide information to the FMC that he knows will not be on the front page of the newspaper the next day or obtained by some attorney's request from the FMC?

Mr. **Hickey**. That is our view.

Senator **Breaux**. There was some discussion—I think John Gaughan mentioned it—about the presidential involvement, presidential override that was lacking in the legislation. It is lacking in section 19 now, is it not? Is that not the current situation?

Mr. **Hickey**. It is not in section 19. But by the rules of the Commission the President has the power, that he cannot delegate, in his view alone, to ask the Commission to cease and desist.

Senator **Breaux**. What is the current practice? Is there an ability right now for the government to override the FMC if we do not think your recommendation is correct, and who can do that?

Mr. **Hickey**. Only the President of the United States.

Senator **Breaux**. Has he ever done it?

Mr. **Hickey**. Never.

Mr. **Bourgoin**. Never.

Senator **Breaux**. And he has that in the absence of anything being spelled out in the Federal Maritime Commission's charter or authorizing legislation? Is that just part of national policy or something?

Mr. **Hickey**. It is done by the Commission's own rule, and that it would be at the request of the President, in the interest of the national security of the United States or the conduct of the foreign policy of the United States, to cease and desist. And it has never happened.

Senator **Breaux**. The thing that we really want to make sure, if we are going to strengthen the power of the FMC, we do not want to increase perhaps the ability of some other institution in government to come in and completely throw away everything that you have done.

And the normal problems we get into in many of these trade matters, the State Department—we have one agency that says this is a terrible practice for the benefit of the United States and here is what should be done, and then someone from State comes in and says, oh, but it is going to cause problems for country X and do not do it.

Are you telling the committee that that has not been a problem for the FMC as far as being interfered with by other agencies?

Mr. **Hickey**. It is in my judgment, Mr. Chairman, not a problem, nor would we allow it to happen.

Senator BREAUX. The problem is not willingly allowing it to happen, but there are so many instances in these trade areas where it just seems to happen that way.

The other thing I want to make sure the bill does not do is create such a broad area, asking you to investigate everything on God's green acre that could possibly be a problem.

Can you give us some comment about the approach that this legislation is taking vis a vis what we are asking you to do? I want to make sure we are not asking you to investigate a shipment of bananas, a shipment of apples, a shipment of oranges.

We want to ask you to look into trade practices, as opposed to item by item type of problems. Are we moving in the right direction from this standpoint?

Mr. HICKEY. Well, we have found it very reasonable and we are very, very comfortable with the language and the description of things that you have asked us to do in the legislation.

Senator BREAUX. OK. For the sake of argument, assume that the legislation is passed, signed into law. How much more of a burden from the standpoint of additional manpower or funding would the FMC need, if any?

Mr. HICKEY. We have not looked at it in great depth, but our reaction is that there might be some fiscal impact, but I do not believe it would be substantial.

Senator BREAUX. What about the ability in the legislation to receive prompt action on practices that are perceived to be unfair?

Obviously, if someone says this is a terrible practice and it takes three years to get into it, three years to get to a final judgment, three years before the lawyers quit investigating and charging and counter-charging and delaying, the company may be out of business, the trade may no longer exist.

Give me some comment, if you would, about the timing or the ability of the FMC under the bill to promptly solve problems that would be brought to their attention.

Mr. HICKEY. Well, my view is that, because of the structure of the language, it gives us greater flexibility and greater speed in our procedures. So it is quite helpful to us in that regard.

Perhaps the General Counsel could comment on those procedures.

Mr. BOURGOIN. I think, Mr. Chairman, as in our use of section 19, the Commission moves as expeditiously as it is required to do under the circumstances. And again, if you are going to afford the parties any due process, you have to at least give them the opportunity to submit comments. I think, barring that, your chances of reversal in a court are extremely high, assuming the matter should get to the court.

I would say that the Commission in the past has been very diligent in moving forward with section 19. Sometimes it can take four months, and it has, and sometimes it can take six months.

Sometimes it has taken longer, but usually there are very good reasons why it has. And more often than not, it is the parties who have initiated the proceeding who are asking us to slow down, not go forward as fast, sometimes to allow them to continue with diplomatic or commercial efforts to resolve the matter in that fashion.

Senator **BREAUX**. What about the feasibility of setting up some kind of a time frame in which certain decisions would have to be forthcoming?

Mr. **HICKEY**. Our reaction is that we would have no objection as long as it is reasonable.

Senator **BREAUX**. We are going to have some specific questions about some of the investigations that are currently pending with regard to procedures, not about outcome or anything of that nature, that we would like to have responded to.

And bearing in mind that we are trying to put this package together to catch the train that is leaving out of the Finance Committee, we need a prompt response on that if we can.

Mr. **HICKEY**. We would be happy to do it.

Senator **BREAUX**. Because if we do not catch that train there may not be another one.

Mr. Hickey, we appreciate it, and we thank you very much for both being here.

Mr. **HICKEY**. Thank you very much, Mr. Chairman.

Senator **BREAUX**. Thank you.

[The statement follows:]

STATEMENT OF EDWARD V. HICKEY, JR., CHAIRMAN, FEDERAL MARITIME COMMISSION

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you to present the view of the Federal Maritime Commission on Title I of S. 1183, the "Foreign Shipping Practices Act of 1987." Appearing with me today is Robert D. Bourgoin, the Commission's General Counsel.

Title I of S. 1183 would provide the Federal Maritime Commission with an additional tool to address practices of foreign governments, carriers and others that unfairly disadvantage the United States merchant marine. It provides a swift process and exacting remedies based solely on whether practices or conditions exist in foreign countries for U.S.-flag carriers that do not exist in this country for carriers of the foreign country. It thus approaches the problem of unfair foreign practices by focusing on the malady itself and not on symptoms that may or may not be the result of unfair practices.

Title I could be viewed as a complement to the Commission's existing authority under Section 19(1)(b) of the Merchant Marine Act, 1920, which permits the Commission to retaliate when the actions of a foreign government or carrier create conditions unfavorable to shipping in a United States bilateral trade. In fact, the activities that Title I would address are similar to those that can presently be addressed under Section 19.

Although in recent times the Commission has only had to promulgate a final rule with countermeasures once in a Section 19 proceeding, this is in no way an accurate measure of its effectiveness. Over the years, Section 19 has been extremely successful. In many cases, the mere threat of Section 19 action, combined with diplomatic negotiations, has resolved the matter. In this regard, the Commission routinely notifies the Secretary of State of allegations of unfair foreign practices and requests that the Secretary seek resolution of the matter through diplomatic channels. However, the State Department has not, during my tenure, exercised or attempted to exercise any control over the Commission's Section 19 proceedings. Nor has the Commission deferred to the State Department on matters involving Section 19.

The Commission's goal in a Section 19 proceeding is to remove the offensive foreign practice, not necessarily to impose sanctions. The Commission has consistently achieved this goal. On every occasion that a U.S.-flag carrier has sought relief under Section 19 from a condition imposed by a foreign government, that condition has been eliminated. In fact, every time the Commission has proposed a rule pursuant to Section 19, the condition giving rise to the action has been removed. I am personally proud of the Commission's accomplishments under Section 19.

This is not to say that Section 19 is without limitations. After 67 years, the Commission has become aware of several areas in which Section 19 could be clarified or otherwise improved. In out opinion, H.R. 1803, a bill recently introduced by Congressman Lent and reported out of the Merchant Marine Subcommittee of the

House Merchant Marine and Fisheries Committee yesterday, addresses these areas and is strongly supported by the Commission.

The Commission is aware of various lists that attempt to catalogue the practices of foreign countries or carriers that disadvantage the U.S. waterborne foreign commerce. Some have questioned why the Commission has not proceeded against each and every practice of foreign countries which may disadvantage U.S.-flag carriers under our Section 19 authority. Let me state at the outset that the Commission is ready and willing to use Section 19 when appropriate. The Commission has never been reluctant or lacked aggressiveness in its use of Section 19.

There are several reasons why the Commission has not instituted a Section 19 proceeding against all of the unfair foreign practices said to exist. In may instances, there is no one complaining to the Commission about the practice. In fact, the Commission is sometimes asked by the carriers affected by the practice not to get involved in these situations for fear of retalitation by the foreign government in question. There are also instances where the U.S.-flag carriers prefer to maintain the status quo because they are the partial beneficiaries of a foreign government's restrictive practice in the bilaterial trade—for example where the foreign government unilaterally reserves substantial cargoes to both the national-flag vessels of that government and those of the United States. Other times, the affected carriers would prefer to try to resolve the problem created by a foreign government practice either diplomatically or commerically or are convinced that the problem is not of sufficient magnitude to warrant government intervention.

Although the Commission can obviously initiate a Section 19 proceeding on its own motion, and has done so, the information needed to take a Section 19 action is not always readily available. The Commission's recent use of trade-wide information requests pursuant to section 15 of the 1984 Act has been effective in this regard, but limited by the fact that such orders can only be directed to common carriers.

Another reason for not precipitously invoking Section 19 is that the practice may be the subject of ongoing diplomatic negotiations which portend some immediate hope for relief. If a diplomatic resolution is possible, it is also often preferable, in that it is least likely to damage sometimes delicate relations between the United States and a foreign country. However, this does not mean that the Commission will refuse to entertain a Section 19 action or defer such action if the practice is the subject of ongoing negotiations. In many instances negotiations and a Section 19 action proceed on parallel tracks, with the threat of sanctions under Section 19 serving as an incentive to a quicker diplomatic resolution of the practice.

Title I does appear to have certain advantages over Section 19. First, it addresses practices of other persons providing maritime or maritime-related services in a foreign country. Section 19 deals only with conditions created by foreign governments or foreign carriers. Recent experience has shown that U.S. carriers may be disadvantaged by the practices of entities other than foreign governments or foreign carriers, particularly in the areas of terminal and port services.

Another feature of S. 1183 which appears to have particular merit is the statutory exemption from the Freedom of Information Act contained in section 23(d). That section permits the Commission, in its discretion, to treat responses to information requests in a confidential manner and not, therefore, disclose them to the public. To the extent that U.S.-flag carriers subject to unfair foreign practices or other trade interests have been reluctant to come forward and provide information for fear of retaliation by the foreign government involved, section 23(d) should assuage their concerns. It also should serve to make information concerning foreign conditions more readily available.

Finally, Title I may permit the Commission to move even more expeditiously against the subject conditions. All the Commission needs to do is find a law or practice that creates a condition for U.S.-flag carriers, that does not exist in this country for foreign carriers, and it can then take action to remedy the condition. No finding of injury in fact is required and, therefore, it may be possible to go forward on a lesser record than would be required under Section 19. This would allow the Commission to proceed without the participation of the affected carriers which may prefer not to get directly involved for reasons alluded to above.

In response to your request that we advise you as to how the Commission might administer Title I if it became law, I would like to review a possible procedural approach. To ascertain the extent of foreign laws or practices which create conditions for U.S.-flag carriers that do not exist in this country for foreign-flag carriers, the Commission could initially issue blanket information requests to carriers involved in our trades. The Commission would also, of course, be responsive to informal complaints it received concerning these conditions. In any event, once the Commission found the existence of foreign conditions, it would then determine whether comparable conditions existed in this country by soliciting input from appropriate agencies, including the Department of State, the Department of Transportation, and relevant state or local entities.

Prior to taking any action against foreign carriers, the Commission would, in its discretion, provide interested or affected persons some opportunity to be heard. This procedure need not be a full oral or evidentiary hearing with a right of cross-examination in all instances, but would at least provide some opportunity for comment consistent with fundamental notions of due process. This would also avoid collateral attacks on the Commission's decisions in the courts.

Mr. Chairman, although Title I could be implemented as drafted, there are areas where we believe that it could be improved to make it even more effective and less subject to challenge. As presently written, section 23(b) merely requires the existence of a condition that does not exist in this country. The condition could be good, bad or indifferent, as long as it is different. Even if the practice resulted in conditions which were better for U.S.-flag carriers, they would have to be investigated and could, theoretically, be subject to sanctions. The Subcommittee may wish to consider modifying this particular section so that it only concerns itself with conditions which disadvantage or are unfavorable to U.S.-flag carriers.

The bill also permits the Commission to act without any and hearing. Although I have indicated that the Commission, in practice, would probably accord some opportunity for comment, the bill might be more defensible if some right to be heard was expressly included in section 23(e). The Commission has provided an opportunity for hearing in its Section 19 procedures, but nonetheless has been able to move expeditiously when necessary.

Section 23(h) states that actions of the Commission shall be final and not subject to judicial review. From a purely parochial perspective, the Commission appreciates not being made answerable to any higher authority. However, this provision may raise constitutional concerns. A right to judicial review would not appear to impede the basic purposes of the bill and would be consistent with the treatment of all other Commission actions under the Shipping Act of 1984, which S. 1183 would amend.

The Commission also has a number of technical suggestions concerning the bill which I am submitting for the record as part of this testimony.

I thank you for this opportunity to comment on S. 1183 and would be pleased to answer my questions.

[The following information was subsequently received for the record:]

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C. 20573

June 1, 1987

Mr. Lloyd L. Beasley, Jr.
Printing Clerk
Senate Committee on Commerce, Science,
and Transportation
508 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Mr. Beasley:

Enclosed are the answers to the questions for insertion in the transcript of Chairman Hickey's testimony of May 21 concerning S. 1183, the Foreign Shipping Practices Act of 1987. This material should be inserted on page 40, line 10 of the transcript.

If you have any questions, please contact me.

Sincerely,

David R. Miles
Legislative Counsel

Question 1. As I understand it, the U.S. is negotiating with the Korean government to permit U.S. carriers to establish full service shipping agencies in Korea, which would allow our carriers to operate as branch offices controlling the services currently provided by Korean agents.

(a) Does this restriction put U.S. carriers at a substantial disadvantage vis-a-vis their Korean competitors?

(b) How long has the present Korean restriction been on U.S. carriers, and what are we doing about it?

(c) Does the FMC contemplate a Section 19 rule in this case?

(d) Does U.S. law put a similar restriction on Korean carriers in the U.S.?

(e) As a quid pro quo for lifting the restriction, I believe the Koreans want assurance from our carriers that they would hire in their new agencies Korean nationals presently working in Korean agencies representing U.S. carriers. Are Korean carriers free to hire whom they want as agents in the U.S.?

Answer: Discussions on shipping, including ancillary maritime services, were held in Washington, D.C. on May 6 and 7, 1987, between representatives of the United States and Korean Governments. Representatives of the U.S. Department of Transportation, Maritime Administration, and the State Department participated in those discussions on behalf of the U.S. The Agreed Minutes of those discussions indicate that the Korean representatives agreed to undertake changes in Korean laws, rules, and policies which apparently would affect some of the issues into which the Federal Maritime Commission initiated an inquiry on April 14, 1987. (A copy of the Agreed Minutes of the May 6-7, 1987 discussions is attached).

On April 14, 1987, the Commission ordered the non-Korean-flag carriers operating in the U.S./Korea trade to provide certain information concerning the existence and substance of Korean laws, rules, regulations and practices which may have discriminatory effects on the operations of non-Korean-flag ocean carriers, including the U.S.-flag carriers. The Commission's Order, issued pursuant to Section 15 of the Shipping Act of 1984, 46 U.S.C. app. § 1714, requires the carriers to respond on or before June 5, 1987.

(a) The Commission expects to be able to assess the degree to which shipping in the U.S. trade with Korea, including the operations of U.S.-flag carriers, may be disadvantaged or discriminated against, after it has received and analyzed the carriers' responses to the Section 15 Order.

(b) The origin, form and specific substance of Korean laws, rules or regulations restricting the operation of branch offices, and specific services or functions, by non-Korean nationals in Korea are among the subjects on which the Commission has sought information from the carriers operating in the U.S./Korea trade.

(c) The Commission will determine whether action under Section 19 is warranted based upon the responses it receives to its Section 15 Order.

(d) The Commission is not aware of any law, rule or regulation of the Federal, or of any state or local, government which would prohibit or restrict the offering of shipping agency services by Korean-flag carriers in the United States. No complaints of such restrictions have been brought to the Commission's attention.

(e) The Commission is not aware of any restrictions on the employment of agents by Korean-flag carriers in the United States.

Question 2. (a) Do U.S. carriers now have an equal opportunity on a commercial basis to carry assembled automobiles and knocked down car sets moving from Korea to the United States?

(b) If not, how long has this discrimination existed; does it put our carriers at a disadvantage; and what are we doing about it?

(c) Is a Section 19 rule an appropriate way to deal with this discrimination?

Answer: No U.S.-flag carrier has complained to the Federal Maritime Commission that it is being discriminated against or disadvantaged in the carriage of automobiles or car sets from Korea to the United States as a result of laws, rules, regulations or policies of the Government of the Republic of Korea. Nor does the Commission have information from any other source that such situations exist. Section 19 might be an appropriate way to deal with any such discrimination.

Question 3. The FMC, of course, administers Section 19 of the 1920 Act, and it is the principal means that agency has for dealing with laws and practices of our trading partners which result in conditions unfavorable to shipping in our foreign commerce.

DOT, State Department, and the STR also deal with maritime laws and activities of our trading partners which are burdensome to U.S. operators.

Would you please describe how these bifurcated responsibilities interface, and tell the Committee if there are formal, written procedures for inter-agency cooperation?

Answer: Both the Federal Maritime Commission and the Executive branch agencies receive information from the international shipping industry on laws or practices of foreign governments which may result in conditions unfavorable to shipping in the U.S. foreign trades. An informal exchange of this information generally takes place during meetings of the Interagency Maritime Policy Group (IMPG). This group, led by the Departments of Transportation and State, was created by the President to formulate U.S. shipping policy, particularly in response to restrictive shipping practices of foreign governments. The FMC participates in IMPG as a technical advisor on Commission authority and functions. Other agencies which participate in IMPG include the USTR, and the Departments of Justice, Commerce and Treasury.

If the Commission receives a petition alleging conditions unfavorable to shipping in the U.S. foreign trades, or begins a Section 19 proceeding on its own motion, it generally requests that the Department of State attempt to resolve the matter through diplomatic channels and report back to the Commission on the Department's diplomatic efforts. This process is set forth at 46 C.F.R. § 585.8, and reads as follows:

> §585.8 Initial action to meet apparent conditions unfavorable-Resolution through diplomatic channels.

> Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission will notify the Secretary of State that such conditions apparently exist, and may request he or she seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of his or her efforts at a specified time.

Prior to or during any Commission Section 19 proceeding, the Executive branch agencies may initiate government-to-government discussions with the foreign government allegedly imposing the restrictive trade practices. Following these government-to-government discussions, the Executive branch agencies generally inform the Commission of the results of these meetings. During the course of such discussions, the Commission would be independently proceeding with its Section 19 action.

There are no formal, written procedures governing the interaction between the Commission and the Executive branch agencies.

Question 4. I take it that U.S. carriers cannot own and operate trucking services in Korea in support of their ocean shipping operations, because Korea wants to protect its depressed domestic trucking business from foreign competition.

(a) Is the ability to have its own trucking operations important to efficient intermodal shipping activities?

(b) Can a Korean ship operator own and operate its own trucking service in the United States?

(c) Is a Section 19 proceeding appropriate in this case?

Answer: (a) It would appear that the ability of a liner operator to own and operate its own trucking service is an important factor in the efficiency of its intermodal operations, permitting it to effectively coordinate the delivery of containerized, export cargo with vessel sailings and the expeditious delivery of import cargoes to consignees, as well as to manage efficiently its fleet of containers.

(b) The Commission is not aware of any law, rule or regulation of the Federal, or of any state or local, government which would prevent a Korean ship operator from owning or operating its own trucking service in the United States.

(c) The Commission will determine whether conditions unfavorable to shipping exist in the U.S./Korea trade as a result of laws, rules, regulations or policies of the Republic of Korea, and whether the existence of such conditions warrant action pursuant to Section 19, after it has received and analyzed the responses of carriers to its Section 15 Order served on April 14, 1987. Those responses are due on or before June 5, 1987.

Question 5. In Korea I understand there is discrimination against U.S. carriers with respect to use of container terminals.

(a) Would you please describe this discrimination; and do you believe it puts U.S. vessels at a competitive disadvantage vis-a-vis their Korean competitors.

(b) Are Korean ship operators subject to this discrimination in the United States?

(c) How long have the Koreans discriminated in this regard?

(d) Is Section 19 an appropriate remedy in this case?

Answer: The issue of discrimination at container terminals in Korea, as well as restrictions on non-Korean ownership and operation of such facilities, were among the issues discussed by representatives of the Korean and U.S. Governments on May 6-7, 1987.

(a) This issue was among those on which the Commission requested information from non-Korean-flag carriers operating in the U.S./Korea trade in its April 14, 1987, Section 15 Order. The Commission expects to be able to assess whether, and to what degree, shipping in the U.S./Korea trade, including U.S.-flag and other non-Korean-flag carriers, may be subjected to unfavorable conditions by Korean laws, rules, regulations or policies governing the use, operation and ownership of container terminal facilities after it receives the carriers' responses, due on or before June 5, 1987.

(b) The Commission is not aware of any discrimination against Korean-flag vessels at container terminals in the United States.

(c) Information on the origin, substance and effect of laws, rules, policies or actions of Korean authorities which may have discriminatory effects on non-Korean-flag carriers may be included in the carriers' responses to the Commission's Section 15 order, which are due on or before June 5, 1987.

(d) The Commission will determine whether action under Section 19 is warranted after it has received and analyzed the carriers' responses to the Section 15 Order.

Question 6. (a) Is it important that U.S. shipowners be able to form an association to represent their collective interests in Korea?

(b) Are they able to do so?

(c) May Korean shipowners do so in the U.S.?

(d) How long has the prohibition been in effect in Korea?

(e) Is Section 19 an appropriate remedy?

Answer: (a) Foreign (i.e., non-Korean) shipowners, including U.S. shipowners, have expressed a desire to have an organization through which they could exchange information and news on a regular basis, deal collectively with other business groups, and collectively present their views to representatives or agencies of the Korean Government.

(b) We understand that a request for approval of a Korean Foreign Shipowners Association was rejected by the Korean Government in July, 1986. However, the Agreed Minutes of the U.S./Korea maritime discussions held May 6-7, 1987 indicate that the Korean Government may now be prepared to approve the formation of such an organization.

(c) No bar to the establishment of an organization to represent the collective interests of Korean shipowners in the United States is known to the Commission. No such organization is known to exist, however.

(d) The Commission has not been informed of the origin of Korean laws, rules or regulations governing the formation of organizations representing the interests of non-Korean nationals in Korea. The Commission's Section 15 Order, served on non-Korean-flag carriers in the U.S./Korea trade on April 14, 1987, requests information on laws, regulations or policies of the Korean Government which restrict the ability of non-Korean nationals or companies to represent the interests of non-Korean-flag carriers to elements of the Korean Government or other organizations. Responses to the Section 15 Order are due on or before June 5, 1987.

(e) The Commission has not, to date, had occasion to determine whether acts, laws or policies of the Korean Government which prevent the formation of an organization to represent non-Korean shipowners in Korea result in conditions unfavorable to shipping which would warrant remedial action pursuant to Section 19.

Question 7. (a) How long has the Commission been investigating the restrictions Japan has placed on the use of high-cube containers by U.S. ocean carriers?

(b) Recently (March 25) the FMC deferred a decision on this matter, and the carriers involved do not have to report until September 30. Why did the FMC defer its decision?

Answer: (a) The FMC has been formally investigating Japanese restrictions on high-cube containers since mid-1986. On May 20, 1986, the Commission initiated its inquiry into the use of high-cube containers in the U.S./Japan trade with service of an Order pursuant to Section 15 of the

Shipping Act of 1984 on the 25 carriers serving that trade. In June, 1986, the Japanese Government issued new guidelines governing the use of high-cube marine containers in Japan. Two supplemental Section 15 Orders were served, on September 5, 1986 and March 23, 1987, to secure updated information which would reflect current conditions, based upon the changes in the administration and enforcement of Japanese laws, rules and regulations reflected in the June Guidelines.

(b) The Commission's second supplemental Section 15 Order asked the carriers whose earlier responses indicate use of high-cube containers, to update their responses and to comment on any further developments which have occurred or action the Commission might usefully undertake. The Commission's Order reflected the information received to date, and the Commission's tentative conclusions based upon that information. Although the impact of Japanese restrictions on high-cube container movements is broadly felt, the depth of that impact may be harder to assess because of the widely varying degree of utilization, or interest in utilization, of high-cube containers among the carriers, and the relatively small proportion of the carriers' container equipment fleets (less than 10 per cent) and total containers shipped in the trade which high-cubes constitute.

The Commission noted that the June Guidelines appeared to have had some ameliorative effect on the problem, and requested additional, specific information from the carriers which would provide data on the use of high-cube containers in the trade for a period of one year following implementation of the June Guidelines. Although carrier and public responses to the supplemental Section 15 Order, and the Notice which was simultaneously published in the Federal Register, are due on or before September 30, 1987, the Commission also stated that it was prepared to act, either at the behest of affected parties or on the Commission's own initiative, at any time pursuant to Section 19, should circumstances so require. No party, either in response to the Commission's earlier Section 15 Orders or the March 23 Order and Notice, has suggested to the Commission to date that such action is warranted on this issue.

Question 8. (a) In Taiwan, do U.S. carriers receive equal priority for berthing and equal access to container storage facilities?

(b) If not, does this put U.S.-flags at a disadvantage vis-a-vis their Taiwanese competitors?

(c) How are Taiwanese carriers treated in the U.S.?

(d) How long have U.S. carriers been subjected to this discrimination?

(e) Is Section 19 an appropriate remedy?

Answer: (a) On April 15, 1987, the Commission requested information in order to assess the possible existence of conditions unfavorable to shipping in the U.S./Taiwan trade with respect to the ability of non-Taiwan carriers to perform ancillary maritime services in Taiwan by service of an Order pursuant to Section 15 of the Shipping Act of 1984, 46 U.S.C. app. §1714, on the non-Taiwan flag carriers serving the trade. If U.S.-flag carriers do not receive equal priority for berthing or access to container storage facilities in Taiwan, the FMC would expect to be informed of the existence of such conditions in response to its Section 15 Order. The carriers' responses to that Order are due on or before June 5, 1987.

(b) If U.S.-flag carriers were not being accorded equal treatment in berthing and container storage facilities in Taiwan, their operations might be put at a disadvantage vis-a-vis those of their Taiwanese competitors.

(c) The Commission has no reason to believe that Taiwanese carriers receive treatment at port facilities in the United States which differs from the treatment accorded other carriers who call at those ports.

(d) The Commission expects to receive responses to its Section 15 Order from carriers serving the U.S./Taiwan trade on or before June 5, 1987, which would describe and identify any laws, rules, regulations or policies of the governing authorities of Taiwan which unfairly or discriminatorily restrict the operations of U.S.-flag or other non-Taiwan-flag carriers in Taiwan.

(e) It is expected that the information requested by the Commission in its Section 15 Order will enable the Commission to determine whether conditions unfavorable to shipping exist in the U.S./Taiwan trade as a result of laws, rules, regulations or policies of the governing authorities of Taiwan and whether action pursuant to Section 19 is warranted to meet or adjust any such conditions found to exist.

Question 9. (a) In Taiwan, are U.S. carriers allowed to own, operate, buy, sell, import, and export dockside container handling equipment?

(b) Does this put U.S.-flags at a disadvantage vis-a-vis their Taiwanese competitors?

(c) Do Taiwanese carriers have this ability under U.S. law?

(d) How long has this restriction been on U.S. carriers?

(e) Is Section 19 an appropriate remedy?

Answer: (a) The Commission's Section 15 Order, served on non-Taiwan-flag carriers operating in the U.S./Taiwan trade on April 15, 1987, requested information on any laws, rules, regulations or policies of the governing authorities of Taiwan which restrict the ability of non-Taiwan nationals or companies to own or operate dockside facilities or equipment ancillary to the performance of international ocean shipping, or to move equipment between Taiwan and other countries they serve. The carriers' responses to the Section 15 Order are due on or before June 5, 1987.

(b) U.S.-flag carriers might be put at a disadvantage vis-a-vis their Taiwan competitors if they are treated less favorably by the governing authorities of Taiwan with respect to their ability to own, operate, buy, sell, import or export dockside container handling equipment.

(c) The Commission is not aware of any restriction on the ability of Taiwan-flag carriers to own, operate, buy, sell, import or export dockside container handling equipment in the United States.

(d) Information requested of carriers operating in the U.S./Taiwan trade, including U.S.-flag carriers, is to be received by the Commission on or before June 5, 1987.

(e) Based upon the information contained in the carriers' responses to its Section 15 Order, the Commission expects to be able to determine whether conditions unfavorable to shipping in the U.S./Taiwan trade exist as a result of laws, rules, regulations or policies of the governing authorities of Taiwan which might warrant action pursuant to Section 19.

Question 10. (a) In Taiwan are U.S. carriers able to remit immediately all earnings, whether operational or non-operational?

(b) Does this put U.S. carriers at a disadvantage vis-a-vis their Taiwanese competitors?

(c) Do Taiwanese carriers have this ability under U.S. law?

(d) How long have these restrictions been on U.S. carriers?

(e) Is Section 19 an appropriate remedy?

Answer: (a) The Commission's Section 15 Order, served on non-Taiwan-flag carriers operating in the U.S./Taiwan trade on April 15, 1987, requested information concerning any laws, regulations, rules or policies of the governing authorities of Taiwan which restrict the ability of non-

Taiwan carriers to collect, transfer or utilize the revenues earned from international ocean shipping operations, including ancillary maritime functions, carried out in Taiwan. The carriers' responses to the Section 15 Order are due on or before June 5, 1987.

(b) U.S.-flag carriers might be at a disadvantage vis-a-vis their Taiwan-flag competitors if they are treated differently with respect to their ability to remit funds earned in Taiwan.

(c) The Commission is not aware of any Federal, state or local laws which restrict the ability of Taiwan-flag or other foreign carriers to remit funds earned in the United States.

(d) Information concerning this and other issues into which the Commission has inquired in its Section 15 Order is expected from the carriers on or before June 5, 1987.

(e) It is expected that the information provided in the carriers' responses to the Section 15 Order will enable the Commission to determine whether conditions unfavorable to shipping exist in the U.S/Taiwan trade as a result of laws, regulations, rules or policies of the Taiwan authorities and whether action pursuant to Section 19 is warranted.

Question 11. (a) In Taiwan, are U.S. carriers able to own and operate trucking services for land transport of containers as part of the intermodal movement of cargo?

(b) Does this put U.S. carriers at a disadvantage vis-a-vis their Taiwanese competitors?

(c) Do Taiwanese have this ability under U.S. law?

(d) How long has this restriction been on U.S. carriers?

(e) Is Section 19 an appropriate remedy?

Answer: (a) The Commission's Section 15 Order, served April 15, 1987 on the non-Taiwan-flag carriers serving the U.S./Taiwan trade, requested information on laws, regulations, rules or policies of the governing authorities of Taiwan which restrict the ability of non-Taiwan nationals and companies to own or operate a trucking service. Responses to the Commission's Section 15 Order are due on or before June 5, 1987.

(b) U.S.-flag carriers might be placed at a disadvantage in efficiently operating intermodal shipping services if they are unable to operate a trucking service for the inland movement of containers while their Taiwan-flag competitors could do so without impediments.

(c) The Commission is not aware of any restriction on the operation of trucking services in support of ocean shipping by Taiwan-flag carriers in the United States.

(d) Responses to the Commission's Section 15 Order, which may reflect this information, are due on or before June 5, 1987.

(e) The Commission will determine whether conditions unfavorable to shipping in the U.S./Taiwan trade exist as a result of laws, rules, regulations or policies of the governing authorities of Taiwan, and whether action under

Section 19 is warranted, based upon the responses to its Section 15 Order and public comments.

Question 12. (a) Under the Shipping Act of 1984, and Section 19 of the Merchant Marine Act, 1920, foreign flag carriers have "standing" to seek redress.

Do the laws of most of our trading partners give a similar right to U.S.-flag carriers when they are trading:

- In the bilateral trade with the United States?
- As cross-traders?

(b) Do the summary procedures and lack of judicial review in Title I raise a fairness issue?

Answer: (a) It is our understanding that a few European nations currently have laws under which U.S.-flag carriers could seek relief from restrictive trade practices in these nations' bilateral trades with the U.S. or in their trades with third-countries. A number of other countries are considering the possibility of implementing this type of legislation.

On December 22, 1987, the European Communities (EC) adopted two regulations which could affect U.S.-flag carrier access to EC trades and their ability to seek redress. One regulation sets down detailed rules to apply the EC's rules on competition (antimonopoly laws) to shipping and the other outlines procedures for coordinated action against restrictive trade practices of foreign governments and possible countermeasures against such practices.

The rules are scheduled to be implemented on July 1, 1987. At that time we will have a clearer understanding of

U.S.-flag carrier standing to seek redress against restrictive practices in the EC trades.

(b) Title I of S. 1183 permits the Commission to take action against a condition without providing affected persons notice or a right to a hearing. These summary procedures do raise questions of fairness and may be susceptible to challenge on constitutional due process grounds.

The specific lack of judicial review of Commission actions also raises fairness issues, but may otherwise be legally acceptable. We note in this regard, however, that courts generally construe no-review provisions very narrowly and will, on occasion, find a right of review even when a statute says there is no right of review.

Question 13. To administer Title I, would your staff and budget have to be increased substantially?

Answer: The activities which can be addressed under Title I are generally similar to activities which can already be addressed under Section 19 of the Merchant Marine Act, 1920. To that extent, implementation of Title I would not necessitate a substantial increase in the Commission's budget or personnel. There may be some increase in both; however, depending on the increased workload generated and the expedition required by the bill.

Question 14. It has been said that U.S. carriers are reluctant to complain about discriminatory practices in other countries, because they fear retaliation.

Wouldn't S. 1183 cause a country to think a bit longer before retaliating?

Answer: It is conceivable that S. 1183 might cause a country to think longer before retaliating against a U.S. carrier that complains about discriminatory practices in a foreign country. However, given the fact that Section 19 of the Merchant Marine Act, 1920 already allows the Commission to take similar actions against the same practices, it may be that S. 1183 will have no effect on a country's decision to retaliate against a complaining carrier. Moreover, it is also possible that S. 1183, with its summary procedure and lack of judicial review, may cause an increase in retaliatory practices, particularly to the extent that the swift action mandated does not permit time for diplomatic or commercial resolution of the dispute.

Question 15. (a) As I understand it, under Section 19 of the 1920 Act the FMC may initiate a proceeding on its own motion, or upon a petition alleging that conditions unfavorable to shipping exist in the U.S. foreign trade.

Under either circumstance, the Commission immediately notifies the Secretary of State, and may request that the Secretary seek resolution of the matter through diplomatic channels. Does the Commission usually allow the diplomatic efforts to run their course before proposing sanctions?

(b) Isn't this process more time consuming than the one provided in S. 1183?

Answer: The Commission does notify the State Department of the initiation of a Section 19 proceeding. We do not, however, delay or otherwise defer our decision while awaiting the outcome of diplomatic negotiations. The Commission's Section 19 proceeding and State's diplomatic efforts proceed on parallel tracks. If the Commission is in a position to issue a final rule, it will do so regardless of the status of the negotiations between State and the involved country. Although the Commission's process under Section 19 could be more time-consuming than under S. 1183, this has nothing to do with the status of diplomatic efforts. The summary procedure of S. 1183 may lead to a more expeditious proceeding.

Question 16. The Commission's rules implementing its Section 19 authority list certain conditions which are considered to be "unfavorable to shipping in the foreign trade" of the United States within the meaning of that section. These include, among others, conditions which:

(1) Impose discriminatory fees, charges, requirements, or restrictions or preclude vessels in the foreign trade of the United State from competing in the trade on the same basis as any other vessel;

(2) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by other vessels;

(3) Discriminate against or unfairly treat carriers, shippers, exporters, importers, or ports of the United States vis-a-vis their foreign competitors.

Does S. 1183 reach a broader range of laws and practices of foreign governments and their national flags?

Answer: S. 1183 does not necessarily reach a broader range of laws and practice of foreign governments and foreign carriers than does Section 19. The Commission has historically interpreted the words "conditions unfavorable to shipping in the foreign trade" very broadly. The conditions listed in the Commission's rules are not intended to be all inclusive, but rather, a representative sampling of the most common types of unfavorable conditions.

S. 1183 is however, broader than Section 19 with respect to the persons within its scope. It includes practices of other persons providing "maritime or maritime-related services in a foreign country," whereas Section 19 only covers foreign governments and foreign carriers.

Question 17. Would you please comment on the following article which appeared in The China Business Review/January-February 1987.

> The value of two-way trade between the United States and China was $8 billion in 1985. As in the past, this tonnage crossed the Pacific primarily by sea. But while goods traded between the United States and China sail both ways in roughly equal amounts, shipping conditions are far less equitable.
>
> China dominates the U.S.-China sea trade through two State-run transport companies, which handle almost all of China's outbound trade. At the same time, those two companies also participate relatively freely in the US market, competing one-on-one with their American and other foreign counterparts.
>
> American shipping lines on the other hand, no longer call directly on China's ports, in part because of Chinese cargo allotment practices that US shipping representatives say favor Chinese ships, port congestion, and Chinese port fees that are reputed to be among the highest in the world. Other US attempts to enter the Chinese market have been prohibited outright.
>
> US freight forwarders and shipping lines cannot directly solicit business from Chinese importers and exporters. And US shipping lines are essentially excluded from operating feeder services between China and Hong Kong because China claims this is a domestic route subject to cabotage.

Answer: The Commission became aware of this article in February, 1987. Reports of the problems that U.S.-flag carriers experience when doing business with the PRC also have reached the Commission from other sources.

Because of these reports, the Commission began an inquiry into conditions in the U.S./PRC trade by issuing orders pursuant to section 15 of the Shipping Act of 1984 on April 16, 1987. In these orders, which were served on the non-PRC carriers in the U.S/PRC trade, the Commission noted the lack of progress in resolving these problems during the three years since the lapse of the maritime agreement between the U.S. and the PRC.

The issues explored in the Section 15 orders include: (1) whether U.S. companies are permitted to operate branch offices in the PRC;(2) whether U.S. companies can freely choose agents to represent them at PRC ports; (3) whether U.S. companies are permitted to operate shipping agencies or sell or market international shipping services, book cargo, or arrange berthing, warehousing or other services in the PRC; (4) whether U.S. carriers are assessed discriminatory charges for the use of port, terminal or other related facilities or equipment in the PRC; (5) whether U.S. companies are restricted in their ability to serve particular PRC ports or to operate feeder services between PRC ports and ports in Japan or Hong Kong; and (6) whether foreign-flag carriers are restricted in their ability to establish, charge, or collect rates or charges set forth in their tariffs. Information received in response to the orders may serve as the basis for the Commission's initiation of a proceeding under Section 19.

While discussions have been held in the past two months on the maritime problems between the U.S. and Taiwan, and the U.S. and Korea, the Commission is not aware of any similar maritime talks scheduled between the U.S. and PRC governments.

Agreed Minutes

Representatives of the Government of the United States of America and the Republic of Korea held discussions on shipping and related issues in Washington, D.C., May 6-7, 1987. The delegation of the United States was chaired by John Gaughan Maritime Administrator, Department of Transportation. The delegation of Korea was chaired by Hahn, Tae-Youl, Deputy Administrator, Korea Maritime and Port Administration.

During the discussions the two sides noted earlier talks on shipping and related issues held in Seoul, November 11-14, 1986, and during the meeting of the United States-Korea Trade Subgroup in Washington, January 12-14, 1987.

The two sides discussed a number of actions to improve the environment for the conduct of the shipping business.

1. (A) The United States stated that U.S. carriers should be permitted to establish their own full service shipping agencies in Korea, which would allow them to operate as branch offices controlling the services currently provided by Korean agents. These services include, but are not limited to, sales (cargo booking), marketing, contracting, contracting for warehousing services, direct negotiation with railroads, and contracting for trucking services. The Korean side informed the United States that it would take necessary steps including the revision of all related laws and regulations in order to allow U.S. carriers to set up their own branch offices for the direct business activities in Korea. The U.S. side stated that it expected the measures would become effective by January 1, 1988. The Korean side assured the U.S. side that it would make utmost effort to permit U.S. carriers' branch offices at the earliest possible date in 1988.

At the request of the Korean side, the U.S. side noted its understanding that, to the extent possible, U.S. carriers would hire in their new agencies Korean nationals presently working in Korean agencies representing U.S. carriers.

(B) The United States stated that on a commercial basis U.S. carriers must have the opportunity to carry assembled automobiles and knocked down car sets moving from Korea to the United States.

The Korean side explained the latest participation of the Korean carriers in the carriage of Korea's export automobiles to the United States and pointed out the transportation arrangements of Daewoo and Kia motor companies with GM and Ford respectively. The Korean side further stated that U.S. carriers' participation in the vehicle transportation be considered on a commercial basis. The U.S. side noted this assurance. The United States stated that it would rely on all available evidence to determine whether there is an open auto shipping market in the U.S.-Korea trade. It noted the continued strong interest of the U.S. Congress in this issue and stated that it would continue to monitor it and would raise it in the future, if necessary.

(C) The U.S. stressed the importance of trucking operations to efficient intermodal shipping activities and said that Korea's prohibition of such operations should be lifted, so that U.S. carriers could own and operate trucking services in support of their ocean shipping operations.

The Korean side responded that it was unable to agree to the U.S. proposal. In the Korean view, the weak and depressed state of Korea's domestic trucking business makes it inadvisable to allow foreign competition. It would reconsider this question if the condition of the domestic industry improves.

The U.S. side stated that it could not accept the position of the Korean side for protecting its trucking market and that it would continue to pursue this issue.

(D) The U.S. side requested the resolution of discriminatory measures on U.S. carriers' use of container terminals. The Korean side said that by no later than January 1, 1988, all discrimination against U.S. carriers with respect to use of container terminals will be eliminated, including: discrimination in the use of container yard; making available CFS facilities to U.S. carriers; giving berthing terms to U.S. carriers that are equal to those accorded Korean carriers.

The U.S. side stated that U.S. carriers should also be able to own and/or operate container terminals.

The Korean side pointed out that presently neither Korean nor foreign carriers are permitted to own or operate container terminals, as these activities are in the hands of the Korean Government.

The U.S. side pointed out that Korean carriers operate terminals in the United States and that U.S. carriers seek the same opportunity in Korea as a matter of equity. It noted the steps announced by the Korean side with respect to ending discrimination in the use of container terminals.

(E) The U.S. side stated its belief that U.S. and other foreign shipowners should be permitted to form an association to represent their collective interests in Korea. It requested that Korea remove its prohibition to such an association.

The Korean side responded that, with the following modifications, the foreign carriers' association would be approved:

(1) The name of the association should be: "Association of Foreign Shipowners' Representatives;"

(2) Its objective should be to promote good shipping relations with Korea through exchange of information and contact with Korean shipping organizations;

(3) Its purpose should be to represent the interests of the member lines.

The U.S. side said that it would inform the U.S. carriers of Korea's new position.

2. (A) The Korean side requested that the United States end discriminatory or unfair practices applied to Korean citizens who seek visas to work in the United States for Korean steamship companies. The Korean side stated that scrutiny of visa applications is excessively strict and time-consuming.

The U.S. side responded that U.S. visa laws make specific provisions permitting foreign companies to send employees to work in the United States. The process is intended to be thorough, but it is not unfair or discriminatory; it applies to all foreign nationals. The U.S. side provided a copy of recent changes in procedures followed by the United States in handling visa applications of managerial or executive personnel or for positions requiring specialized knowledge. The U.S. side indicated that U.S. visa authorities would be prepared to respond to questions which Korean Government authorities might have.

(B) The Korean side expressed concern over several protectionist measures which have been proposed in the U.S. Congress which would, in the Korean view, restrict the free market in shipping.

The U.S. side described various maritime bills, some of which have been included in the trade bill, H.R. 3. The U.S. side explained that it had opposed and would continue to oppose all protectionist shipping proposals by the Congress. The U.S. side stated that it was too early to determine the precise elements of comprehensive trade legislation which the Congress intended to pass. The U.S. side also stated that its opposition to protectionism would have more impact on the Congress if it were supported by action on the part of Korea to remove its restrictions on the operations of U.S. carriers.

(C) The Korean side proposed that Korea and the United States conclude a bilateral maritime agreement that would include, among other provisions, a cargo sharing arrangement providing 40% shares each for Korean and U.S. carriers and a 20% share for third-flag carriers. The Korean side noted that it had been making this proposal for a number of years. The Korean side said that, instead of diverting attention to peripheral issues involving agencies or facilities, the U.S. and Korea should focus on the main issue: cargo sharing. The Korean side stated that it would continue to pursue this issue. The U.S. side stated that it continued to oppose a bilateral agreement, as it was opposed to any arrangement which interfered with the free flow of trade. The U.S. side also noted that conclusion of a cargo sharing agreement with Korea would weaken its ability to resist protectionist bills in Congress.

(D) The Korean side expressed its concern over the inquiry into Korean maritime laws, regulations and practices undertaken by the Federal Maritime Commission under Section 15 of the Shipping Act of 1916 and requested clarification of the background of the inquiry. The Korean side stated its view that the Commission should not have requested information on Korean practices from third-flag carriers, as this was a strictly bilateral matter.

The U.S. side pointed out that the FMC's Section 15 order is a means of obtaining information about conditions prevailing in a trade and it is not limited to national flag carriers operating in that trade.

(E) The Korean side expressed its concern that the interests of the Daewoo shipyard and the Korean Government with respect to the Chapter 11 proceedings of U.S. Lines and the public auction were being injured. Daewoo holds a mortgage on the 12 U.S. Lines' econships in the amount of US$156 million, which is guaranteed by Korea's public insurance fund.

The U.S. side indicated that it understands fully the Korean side's concern. However, it explained that under the Ship Mortgage Act of 1920, Section 30, Subsection O(f), "No vessel of the United States shall be sold by order of a district court of the United States in any suit in rem in admiralty to any person not a citizen of the United States."

The Korean side pointed out that reflagging of any U.S. registered vessels is subject to the approval by MARAD's sole discretion pursuant to 46 USC 803. In this context the Korean side requested that the reflagging of the econships be allowed, so that they could be sold to the highest bidder, regardless of nationality. This would maximize the return on the vessels and limit the insurance exposure of the Korean Government.

The U.S. side stated further that if an application is made by Daewoo under Section 9 of the Shipping Act of 1916, it will be given due consideration, in accordance with applicable maritime and national defense policies.

3. The U.S. side emphasized its clear understanding that the Korean Government had committed itself to measures lifting restrictions on U.S. carriers, in paragraph 1 above, with appropriate timetables for carrying out such action. The U.S. side noted that bilateral economic and trade discussions will take place in late June in Washington. Both sides agreed that this will be an appropriate time to reiterate the commitments made in paragraphs 1 and 2 above.

In concluding, both sides noted that the consultation was conducted in an atmosphere of friendship and cooperation and recognized the progress that the current round of consultations had made.

T. Y. Hahn

John Gaughan
Maritime Administrator
Department of Transportation

Hahn, Tae-Youl
Deputy Administrator
Korea Maritime and Port
Administration

Senator BREAUX. I would like to welcome now Mr. Al May, Mr. George Hearn, Mr. Peter Finnerty, Mr. Harold Grehan. They are the first panel on the witness list.

We apologize for bringing you up all at once, but we are looking forward to your testimony and everybody on the panel.

STATEMENTS OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, COUNCIL OF AMERICAN FLAG SHIP OPERATIONS; GEORGE H. HEARN, EXECUTIVE VICE PRESIDENT, WATERMAN STEAMSHIP CORP.; PETER J. FINNERTY, VICE PRESIDENT, PUBLIC AFFAIRS, SEA-LAND CORP.; AND HAROLD S. GREHAN, JR., EXECUTIVE VICE PRESIDENT, CENTRAL GULF LINES, INC.

Mr. MAY. It is nice to appear again, sir. CASO's member companies own and operate the majority of U.S. flag liner ships. Thus we have a real interest in S. 1183, which we support.

The basic premise of this bill as we understand it is fair and should be written into law, we believe that U.S. flag carriers should be permitted to do the same things in foreign countries to compete for cargo as we allow foreigners to do in this country.

In practice this is not the situation around the world, and we are often stymied by foreign laws and practices. This is damaging not only to the transportation companies, but to the balance of payments and to our general national interest.

We believe that new legislation, specifically the bill before you, can correct much of this situation.

We are becoming more and more intermodal, as you well know. As we move in that direction it is absolutely essential that any law of this sort reach to the inland services, inland terminals, inland transportation modes, marketing, computers, personnel, everything that is needed to really compete effectively in an intermodal world.

We encounter discriminations that prevent this in many countries, as you have noted, and as is detailed in the excellent House report to HR 1290.

The discriminations that most bother us generally fall today into two categories. First, we are not allowed to structure our services and offer them directly, but we have to hire other people, often agents of companies that are partially owned by our foreign competitors to provide the service. We must pay the full cost plus their profit. This means that we cannot effectively control costs and thus we cannot compete as effectively as we otherwise could.

A second substantive problem that occurs in many of these discriminations is the fact that we cannot offer our own trucking, container yard, shoreside and other intermodal facilities. Thus, we lose exposure in a foreign country. And when you lose exposure you lose marketing ability and the ability to compete for cargo.

We think that part 1 of S. 1183 addresses these problems, because it very properly defines maritime related services in a very broad way.

As we read it, it covers labor, and all inland transportation modes, which you were discussing earlier during the testimony of the FMC chairman.

Most importantly, the bill also provides for a flexible response. One of the problems with section 19 is, that it is a nuclear bomb. You have to pull a tariff and you are really not going to do that. You are just not going to pull the tariff of a major U.S. trading partner.

The foreigner knows this and thus, while there is some leverage on him, there is not the leverage there should be. We believe that the flexible response provided in this bill is a very good because you can escalate what you do. The message will get across.

In short, we believe that the bill is needed. We believe it will help correct the problem. We look forward to working with you and the Members of this committee to get it enacted. Thank you, Senator.

[The statement follows:]

STATEMENT OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, COUNCIL OF AMERICAN-FLAG SHIP OPERATORS

The Council of American-Flag Ship Operators (CASO) is a voluntary association whose members (American President Lines, Lykes Bros. Steamship Co., and Farrell Lines) operate a majority of U.S. flag liner vessels.

CASO members offer a wide variety of liner services including the most advanced point to point intermodal service in the world.

The CASO companies believe that they should be allowed to compete in the international marketplace on fair terms. We should be allowed to do in other nations what non-U.S. flag carriers and their corporate affiliates do in this country to compete for cargo.

Unfortunately, we do not always have that opportunity. Our efforts to pursue business, including our ability to efficiently structure our operations, are often sytmied by practices and laws in other countries which we consider unfair. Those practices limit our overseas operations in a way which contrasts starkly with the operational freedom which our country allows non-U.S. carriers.

Unfair practices relating to the provision of maritime services not only hurt CASO members and other transportation companies. They also have an adverse effect on the U.S. balance of trade and the nation as a whole. They cause our nation to "import" more of its maritime services than would otherwise be the case.

We believe, that, as a nation, we can do more to eliminate unfair practices in maritime commerce. Some may express the view that exiting law provides our government with legal tools sufficient to address such unfair trade practices. However, we believe that new legislation can help, particularly in achieving results more promptly.

Thus, we were pleased by Chairman Breaux's introduction of Title I of S. 1183, the proposed "Foreign Shipping Practices Act of 1987". In particular, we share his view that new legislation should enable the FMC to discover and eliminate unfair trade practices more quickly.

We also share Chairman Breaux's view that this legislation should be moved soon. Through the hard work of the Merchant Marine and Fisheries Committee, the House of Representatives has already passed legislation addressing this issue as part of H.R. 3, the Trade bill. Now that S. 1183 has been introduced, we see a very good opportunity for prompt enactment of legislation regarding fair trade in maritime practices. We want to work with this Committee to maximize that opportunity.

THE NEED FOR MARITIME FAIR TRADE LEGISLATION

Let us turn now to a more specific discussion of the need for legislation in this area.

We believe that the major changes which have occurred in ocean transportation in recent years have made the need for this legislation particularly acute. We are now far beyond an era of mere "containerization". Liner carriers compete in the provision of intercontinental point to point as well as port to port service. A carrier that can't efficiently handle even one portion of a through movement loses business to a competitor that can. Thus, liner operators have an "intermodal view" of the range of activities that must be taken into account in assessing whether another nation's transportation trading practices provide U.S. carriers a fair opportunity to compete.

We will not take the time today to try to list nations where U.S. carriers encounter unfair practices. In his statement introducing the bill, the Chairman listed twenty-five. The report of the House Merchant Marine and Fisheries Committee on H.R. 1290 also included a summary of practices in various nations which unfairly make U.S. carriers less competitive.

What we will emphasize today is why it is important to eliminate any such practices. Let us take, for example, restrains on U.S. flag operators in South Korea. Notwithstanding that nation's thorough appreciation of intermodalism (it builds numerous container ships), it prohibits U.S. flag carriers from conducting their own trucking operations in that nation. Nor are U.S. carriers allowed to own or operate their own terminal facilities there. They must use Korean agents for sales, wharehousing, and other maritime operations. Korean carriers (or affiliated companies) are not restricted from such activities in the United States. These competitors of ours not only can offer trucking service in this country, but double stack train service and combined truck/rail service. They can lease or own property for container yards and truck terminals and can freely choose their own agents and employees to aggressively pursue sales opportunities.

Obviously, the non-U.S. carriers are undertaking such activities in the U.S. because they are beneficial. We think there are two reasons why—and these are the basic reasons why U.S. carriers should be allowed to offer such services on their own in foreign countries.

The first is cost control. If we are not allowed to structure and offer our own services, we have no choice but to pay others (covering their costs and profit) to perform those services. Thus, we lose an opportunity to cut costs. This, in turn, affects both our profitability and our ability to make competitive price/service offerings. Restrictions on our competitiveness are particularly obvious and painful when they concern the use of equipment, such as high cube containers or our own chassis. The cost of leasing other equipment to get the job done is a great waste of financial resources and an underutilization of our equipment. Sometimes there is an additional financial twist to these restrictions. The contractors who provide the service that the U.S. carrier is prohibited from providing on its own sometimes have a direct or indirect affiliation with a competing line. All other things being equal, we would prefer not to provide indirect payments to our competitors.

A second disadvantage we suffer as a result of our inability to offer trucking, container yard and shoreside services is in the area of customer exposure/marketing. Competitors are able to point to their own facilities and create a sense of confidence on the part of the customer as to the comprehensive nature of their services. If we were offering such services in a foreign country, we would have more points of direct contact with customers and the business infrastructure there, strengthening our marketing. Barriers to U.S. carriers providing shoreside and intermodal services thus not only put them at a direct cost disadvantage, but hinder effective marketing. Shippers in other countries see us less, so they use us less. By contrast, foreign carriers and their shoreside support networks are highly visible here.

IMPROVING OUR NATIONAL RESPONSE TO UNFAIR TRADE PRACTICES

We turn now from unfair trade practices and their effects to the question of how our government should respond to this problem. First, let us emphasize that we strongly encourage the FMC and the Executive Branch to act promptly and firmly on all unfair trade practice issues within their jurisdiction. In that regard, we want to note here that we appreciate that the Executive Branch has dedicated considerable time to negotiations with foreign governments in an effort to alleviate problems facing U.S. carriers in Asia. We were also pleased to see the FMC recently take initial steps regarding those problems.

However, Congress can help. We think Title I of S. 1183 includes two particularly desirable provisions. First, its definition of "maritime related services" is properly broad. The bill correctly ensures that the FMC can address unfair practices concerning shoreside and intermodal services. Second, the bill correctly provides the FMC with a broad range of sanctions to impose in response to unfair trade practices. We believe that our nation's statutory scheme for dealing with unfair maritime and maritime-related trade practices must provide for the imposition of strong sanctions in those cases where negotiations and the use of lesser sanctions do not produce a fair trading system.

Finally, we suggest that the bill would be improved if it imposed some time deadlines on the FMC regarding both the completion of investigations of alleged unfair trade practices and the imposition of sanctions respecting unfair trade practices which are identified. We recognize that negotiations with other nations will also be used in efforts to resolve these problems. However, negotiations should not take as long as they do. We believe that Congress can, in structuring this legislation, not only directly help U.S. carries, but help our agencies communicate to other nations a sense of urgency about these issues. Developing time deadlines for FMC action is, we believe, one way to do this.

Moreover, the imposition of time deadlines would be consistent with the many other trade and transportation statues (including other provisions of the Shipping Act of 1984) which require agencies to complete actions within set time frames. If, on further review, we have any other technical suggestion, we will raise them with staff.

CONCLUSION

In conclusion, we commend the Chairman for introducing S. 1183 and the Committee for scheduling this hearing. Unfair trade practices in maritime commerce are a real problem. They deserve prompt Congressional action, including advancement of S. 1183.

[The following information was subsequently received for the record:]

COUNCIL OF AMERICAN-FLAG SHIP OPERATORS,
Washington, DC, June 1, 1987.

Mr. JOHN HARDY,
Subcommittee on Merchant Marine, Committee on Commerce, Science and Transporation, Washington, DC.

DEAR JOHN: Enclosed are answers to most of the questions on S. 1183 which the Senate Merchant Marine Subcommittee requested that CASO answer in writing following the Hearings on May 20th and 21st 1987.

We regret the delay in submitting these answers but many of the questions were complex and required consultation with our individual member companies. Answers to Question 3 through 10 relating to Part I of the bill all require specific current information with regard to trading conditions in Taiwan and Formosa. The answers are being drafted by company personnel knowledgeable in these areas and will be sent to you as soon as possible.

Yours sincerely,

ALBERT E. MAY.

Enclosure.

PART 1—PROPOSED FOREIGN SHIPPING PRACTICES ACT

Following are the answers of the Council of American Flag Ship Operators to questions on Part I of S. 1183 which were given to CASO the Senate Merchant Marine Subcommittee following the hearing on Part I of S. 1183 on May 21, 1987

Question 1. Are the definitions of "maritime services" and "maritime related services" in S. 1183, broad enough to cover the kinds of laws and practices which are burdensome to U.S. carriers?

Answer. We believe they are broad enough to cover the kinds of laws and practices which are burdensome to U.S. carriers. Since lawyers are notoriously ingenious in attempting to broaden or restrict the scope of statutory language, it would probably be desirable to include language in the Report accompanying the bill to make it clear that the Congress intends that the terms "maritime services" and "maritime related services" are intended to be given very broad definitions.

We note that the FMC, in testimony, stated that it was unclear whether truck or rail services would be covered. We want such services covered, and, since the FMC must administer the proposed satute, we urge the Committee to make that result clear in the bill or report.

Question 2. Should there be a time limit for FMC investigations and action under S. 1183, and if so, what would you suggest?

Answer. Yes we believe there should. One of the principal problems which carriers have experienced with Section 19 of the Merchant Marine Act of 1920 and Section 301 of the Trade Act is the delay of months or even years between the start and finish of a proceeding. Since such proceedings can be very expensive and often lead to swift foreign retaliation, carriers have frequently been reluctant to bring complaints.

Carriers would like to see the broadest reasonable time limits placed in the statutes. It is difficult to determine just what these should be since we do not wish to be unreasonable, nor would we want to lay the groundwork for a challenge to the statute because of clearly unworkable time requirements. It may be the Commission could make the determination required in Section 23(b) that conditions exist in a foreign country that do not exist in the United States in a matter of two or three weeks. The Commission action provided for in Section 23(e) might reasonably take longer, but since a very broad range of corrective actions are authorized, initial actions should be able to be put in place within another 30 days.

Question 3.

1. As I understand it, the U.S. is negotiating with the Korean government to permit U.S. carriers to establish full service shipping agencies in Korea, which would allow our carriers to operate as branch offices controlling the services currently provided by Korean agents.

Does this restriction put U.S. carriers at a substantial disadvantage vis-a-vis their Korean competitors?

How long has the present Korean restriction been on U.S. carriers, and what are we doing about it?

Does U.S. Law put similar restriction on Korean carriers in the U.S.?

As a quid pro pro for lifting the restriction, I believe the Koreans want assurance from our carriers that they would hire their new agencies Korean nationals presently working in Korean agencies representing U.S. agencies. Are Korean carriers free to hire whom they want as agents in the U.S.?

2. (a) Do U.S. carriers now have an equal opportunity on a commercial basis to carry assembled automobiles and knocked down car sets moving from Korea to the United States?

(b) It not, how long as this discrimination existed; does it put our carriers at a disadvantage; and what are we doing about it?

(c) Is a Section 19 rule an appropriate way to deal with this discrimination?

Answer. Korean restrictions prohibiting U.S. carriers from establishing full service shipping agencies in Korea seriously disadvantaged U.S. carriers. Direct representation is always preferable to agency representation. Essential services such as sales, cargo booking, rail and truck negotiation and contracting for warehouse service are currently handled by a Korean agent rather than APL personnel. Ultimately, U.S. carrier service levels are impacted by the lack of direct representation. There are also additional costs associated with agents. These restrictions have been in effect since APL has served Korea. The Korean government has recently suggested they will lift this restriction. However, there is no definitive time frame. It is critical to implement this new ruling as soon as possible. There is no similar restriction on Korean carriers in the U.S. Korean carriers are free to employ whomever they desire in the U.S. Section 19 proceedings would be appropriate and useful if the announced reversal in Korean regulation is not expedited. However the proposed additional provisions under S. 1183 add important enforcement investigative capabilities and reflect a growing concern on the U.S. government's part.

U.S. carriers have questionable access to KD cars moving from Korea to the U.S. There is a strong institutional bias favoring Korean carriers on the part of Korean shippers routing the freight. However, this issue would be better addressed under the ongoing bilateral trade discussions between Korea and the U.S. rather than a Section 19 proceeding.

Question. 4. I take it that U.S. carriers cannot own and operate trucking services in Korea in support of their ocean shipping operations, because Korea wants to protect its depressed domestic trucking business from foreign competition.

Is the ability of a liner operator to have its own truck operations important to efficient intermodal shipping activities?

Can a Korean ship operator own and operate its own trucking service in the United States?

Is a Section 19 proceeding appropriate in this case?

Answer. American carriers are unable to operate their own trucking companies in Korea. The ability of a U.S. carrier to own and operate their own trucking service is of significant importance to an efficient intermodal shipping operation. The trend in international shipping is for ocean carriers to provide a "bundling" of services including motor, rail and water transportation. This limitation also impacts a U.S. carrier's ability to address all cost components in a customer's transportation network. While there is no specific law precluding American carriers from operating a truck company, Korean Ministry of Finance guidelines restrict foreign investment in domestic freight transportation companies. Korean ship operators can own trucking services in the U.S. Section 19 proceedings would be appropriate and useful and should be pursued. The proposed additional legislative provisions under S. 1183 add important enforcement and investigative capabilities and reflect a growing concern on the U.S. government's part.

Question. 5. In Korea I understand there is discrimination against U.S. carriers with respect to use of container terminals.

Would you please describe this discrimination; and do you believe it puts U.S. vessels at a competitive disadvantage vis-a-vis their Korean competitors.

Are Korean ship operators subject to this discrimination in the United States?

How long have the Koreans discriminated in this regard?

Is Section 19 an appropriate remedy in this case?

Answer. With respect to container terminals in Korea, the U.S. carrier is disadvantaged vis-a-vis Korean competitors. The Korean carriers receive automatic berthing priority in Korea. This impacts American carriers ability to adhere to advertised schedules and plan the discharge/loading of a vessel. This results in an inability to control costs and provide reliable service. Additionally, American operators are precluded from owning land in Korea. Container terminals require land in order to operate. The Korean Ministry of Finance guidelines restrict foreign investment in the freight terminal business and have been in effect since APL has served Korea. The benefits of land/terminal ownership, such as cost control and increased productivity, are lost to the American carrier. Further, the American operator will not have equal access to sites where ownership is preferred. There is no similar restriction against Korean carriers owning or operating terminals in the U.S. Section 19 proceeding would be appropriate and should be pursued. The proposed additional legislative provisions of S. 1183 add important enforcement and investigative capabilities and reflect a growing concern on the U.S. government's part.

Question. 6. (a) Is it important that U.S. shipowners be able to form an association to represent their collective interests in Korea?

(b) Are they able to do so?

(c) May Korean shipowners do so in the U.S.?

(d) How long has the prohibition been in effect in Korea?

(e) Is Section 19 an appropriate remedy?

Answer. It is important that U.S. carriers be allowed to form an association to represent their collective interests in Korea. In trade lanes and nations where these associations are allowed, U.S. carriers have established them. Carrier assocations allow collective discussion of common problems and potential solutions. An association enhances the ability to focus on major problems and propose realistic solutions. Currently American operators are prohibited from forming such an association in Korea. There are indications that the Korean government has agreed to the formation of an Association of Foreign Shipowner Representatives. The prohibition against American operators forming associations in Korea has been in effect since APL has served the Korean market. There is no restriction in the U.S. prohibiting Korean carriers from establishing a collective association. A Section 19 proceeding would be appropriate and should be pursued if the Koreans do not follow through on their agreement to allow a foreign shipowner association.

Question. 7. (a) In Taiwan, do U.S. carriers receive equal priority for berthing and equal access to container storage facilities?

(b) If not, does this put U.S. flags at a disadvantage vis-a-vis their Taiwanese competitors?

(c) How are Taiwanese carriers treated in the U.S.?

(d) How long have U.S. carriers been subjected to this discrimination?

(e) Is Section 19 an appropriate remedy?

Answer. With respect to equal berthing priority and equal access to container terminal facilities in Taiwan, U.S. carriers are seriously disadvantaged. Only one of the three Taiwan ports allow American carriers exclusive berthing rights. These exclusive berthing rights can only be accomplished through lease and joint use arrangements. At two of the three major Taiwan Port facilities, a partly government owned company holds the sole license to offer port services. These services include shipside container operations, stuffing, operation of freight stations and equipment. The charges of the government owned company are significantly higher than an operation owned and managed by APL. This leads to U.S. carrier inability to control costs and provide consistent optimum service. In the instance of the Port of Keelung, U.S. carriers are precluded from securing any long-term terminal space. Taiwan carriers are allowed free and open access to container terminal facilities and berthing arrangements in the U.S. The restriction on American operators securing priority berthing and owning/operating container facilities in Taiwan has been in existence since APL has served Taiwan. A Section 19 proceeding would be appropriate and should be pursued. The proposed additional legislation provisions found in S. 1183 provide important enforcement and investigative capabilities and reflect a growing concern on the part of the U.S. government.

Question 8. (a) In Taiwan, are U.S. carriers allowed to own, operate, buy, sell, import and export dockside container handling equipment?

(b) Does this put U.S. flags at a disadvantage vis-a-vis their Taiwanese competitors?

(c) Do Taiwanese carriers have this ability under U.S. laws?

(d) How long has this restriction been on U.S. carriers?

(e) Is Section 19 an appropriate remedy?

Answer. In Taiwan U.S. carriers are unable to own, operate, buy, sell, import or export dockside container handling equipment. No law precludes such activity. However, jurisdiction rests with provincial authorities who have been unwilling to negotiate removal of local restrictions. This places the U.S. carrier at a distinct competitive disadvantage in relation to Taiwan carriers. This situation creates an inability on the U.S. carrier's part to secure state of the art equipment (to increase productivity) at competitive costs. The U.S. carriers do not control their own operational cost nor accrue any benefits associated with ownership. This issue is integral to American carrier operations in Taiwan. Because there is significant cargo originating from inland and Northern points in Taiwan, and because American carriers are severely limited in their ability to own/operate terminal facilities, equipment capabilities at Port areas become critical. American carriers are further constrained in their handling of these cargoes by their inability to secure terminal facilities at inland locations. What use American carriers do have of inland terminal facilities hinges on equipment capability. There is no similar restriction on Taiwan carriers operating in the U.S. The restriction on U.S. carriers in Taiwan has been in existence since APL has served Taiwan. A Section 19 proceeding is appropriate and should be pursued. The proposed provisions of S. 1183 offer important additional enforcement and investigative capabilities and reflect the growing concern of the U.S. government.

Question 9. (a) In Taiwan are U.S. carriers able to remit immediately all earnings, whether operational or non-operational?

(b) Does this put U.S. carriers at a disadvantage vis-a-vis their Taiwanese competitors?

(c) Do Taiwanese carriers have this ability under U.S. law?

(d) How long has these restrictions been on U.S. carriers?

(e) Is Section 19 an appropriate remedy?

Answer. In Taiwan U.S. carriers are allowed to immediately remit income from freight related activities. However, freight payments collected in Taiwan under FOB terms, at the request of the shipper, can be subject to extensive waiver requirements before remittance is allowed. Additionally, and of significance, non-operational local currency income, such as bank interest and proceeds received on equipmental disposal may not be remitted. As U.S. carrier Taiwan operations grow, the size of these non-operational blocked funds will grow. The restriction on the remittance of non-operational funds precludes American carriers from realizing the benefits of well-managed operational assets and cash holdings. There are no restrictions in the U.S. on the ability of Taiwan carriers to remit funds, whether operational or non-operational. Current Taiwan restrictions on American carriers have been in place since APL has served Taiwan. A Section 19 proceeding is appropriate and should be pursued. The provisions of S. 1183 offer important additional enforcement and investigative capabilities and reflect a growing concern of the U.S. government.

Question 10. (a) In Taiwan, are U.S. carriers able to own and operate trucking services for land transport of containers as part of the intermodal movement of cargo?

(b) Does this put U.S. carriers at a disadvantage vis-a-vis their Taiwanese competitors?

(c) Do Taiwanese have this ability under U.S. law?

(d) How long has this restriction been on U.S. carriers?

(e) Is Section 19 an appropriate remedy?

Answer. In Taiwan, U.S. carriers are not allowed to own or operate their own trucking companies. Taiwan carriers are allowed and do operate their own truck companies in Taiwan. This puts American carriers at a severe disadvantage with respect to Taiwan carriers. Based on American carriers' inability to secure adequate container terminal space (No. 7), trucking charges become the largest single operating cost for APL in Taiwan. APL is then forced to pay inflated prices for truck services of an inferior quality. These truck companies that APL must then contract with, are in many cases affiliates of APL's Taiwan competitors. APL loses all ability to control cost, ensure premium service levels and is forced to deal with competitors' affiliate truck companies. Taiwan carriers do have the ability to own and operate truck companies in the U.S. The restriction against U.S. carriers owning and operating truck companies in Taiwan has been in existence since APL has served Taiwan. A Section 19 proceeding would be appropriate and should be pursued. The proposed legislative provisions of S. 1183 offer important additional enforcement and investigative capabilities and reflect a growing concern on the part of the U.S. government.

PART II—TO AMEND THE OPERATING DIFFERENTIAL SUBSIDY PROGRAM

Following are the answers of the Council of American Flag Ship Operators to questions on Part II of S. 1183 which were given to CASO by the Senate Merchant Marine Subcommittee following the hearing on Part II of S. 1183 on May 20, 1987.

Question 1. If taxpayers' money is spent on an expanded ODS program, how can we protect against this money being wasted on U.S. flag carriers who concentrate on unnecessary competition with each other?

Answer. We believe that "unnecessary competition" among U.S. flag lines on any route or routes is a highly unlikely possibility for the foreseeable future. The keystone of the Merchant Marine Act of 1936 is "substantial" U.S. flag participation in our foreign commerce. This in turn has been construed to mean 50 percent U.S. flag participation. It seems unlikely, under any scenario, that U.S. flag participation will reach that level, and it is only when it exceeds that level that subsidy supported competition could be considered "unnecessary".

Question 2. In your statement you say that the bill should be amended to provide for foreign flag feeders by ODS operators.

(a) If we did so, wouldn't we be spending subsidy money for foreign-flags (feeders) to compete with other foreign flag vessels (feeders or line haul); and isn't ODS paid so U.S. flag can compete against foreign flags?

Answer. Our recommendation contemplates the use of foreign flag feeders manned by unsubsidized foreign seamen. Accordingly, no subsidy money would be required.

Question 3. In your statement you say there was broad support within the maritime industry for foreign flag feeders. What about the individual maritime unions?

Answer. We believe it is most appropriate to let individual maritime unions speak for themselves on this issue. However, we do intend to discuss the problem with them and hope to arrive at a general consensus on a proposal for foreign flag feeders such as that contained in a late version of the Liner Development Act in the last Congress.

Question 4. This morning Matson Navigation will propose that Section 805(a) be strengthened to guard against incursions into the domestic trades by ODS contractors which are unfair and prejudicial to the objects and policy of the Merchant Marine Act.

(a) Do you agree that Section 805(A) needs strengthening?

(b) Are you familiar with the Matson Amendment?

(c) Under the amendment to Section 805(a) of the Merchant Marine Act, 1936 suggested by Matson, would it ever be possible for a recipient of operating differential subsidy to operate in the domestic trades?

Answer. CASO strongly disagrees with proposals to "strengthen" Section 805(a), including the Matson amendment, as inimical to a policy of growth for the U.S. flag merchant fleet. Under the Jones Act, domestic cargoes are reserved to U.S. built, U.S. flag vessels. There is no question that U.S. vessels and U.S. crew will always handle all of that cargo.

Thus, whether the U.S. flag fleet grows or, instead, continues to decline, depends on those carriers which are willing to take on the challenge of foreign flag competition in the U.S. foreign trades. It is those carriers who are willing to take the risks of competing in those foreign trade markets which most strongly deserve the support of Congress at this critical juncture for our fleet. It is those carriers which compete against state owned fleets, fleets using very low cost labor, fleets using low cost non-U.S. built ships, and which have to face protective foreign government and carrier practices (which are correctly being addressed by the Committee in Title I of S. 1183). Only if our carriers which serve international commerce grow will there be growth in U.S. flag merchant jobs and commerce.

For that growth to occur, carriers operating in U.S. foreign trades must be efficient in their operations. If those operations are made more efficient by including domestic services, that should be allowed so long as those carriers repay pro rata the amount of subsidy attributable to that domestic service, as the Merchant Marine Act has authorized and provided for over 50 years.

As to part (c) of the question, should the Matson amendment, or a variation of it, unfortuantely be enacted, its precise meaning would likely be the subject of litigation and CASO members would address that precise legal issue should they find themselves in such litigation. There is no question, however, that Matson intends by its amendment to make it more difficult for ODS operators to serve domestic commerce. Lastly, while CASO opposes the amendment generally, it particularly opposes the amendment or any variation of it being applied to ongoing proceedings. Any such amendment should not govern Section 805 applications which have already been filed.

Question 5. In order for an ODS recipient to carry cargo in the domestic trades, a pro rata portion of the operating subsidy must be repaid to the federal government under a formula set out in Section 605 of the Merchant Marine Act, 1936. Assuming this pro rata amount of operating subsidy is relinquished in return for the subsidized company operating in the domestic trade, do you feel that the subsidized operator could still have an unfair advantage over unsubsidized companies?

Answer. No. We are mystified by suggestions that ODS carriers operating in foreign trades are somehow advantaged in domestic operations after they repay subsidy.

Question 6. I believe the trade route deregulation provided in Title II gives operators considerably more freedom than the trade route deregulation provided in MARAD's rule because the "adequacy of service" test under Section 605 would not be a factor until the level of service provided by U.S. liners reached about 50 percent in our overall liner trades. Whereas under MARAD's rule the adequacy of service test under Section 605 would be a factor whenever an operator wanted to amend his ODS contract.

Does the Title II approach give subsidized operators a substantially better opportunity to compete against foreign flags?

Answer. Yes.

Question 7. I note that the Presidential Commission on Merchant Marine and Defense is doing an analysis on the ability of the U.S. maritime industry to meet national defense requirements, including shipbuilding and ship repair. That final report is due in September 1988.

Without questioning the integrity or dedication of any of the Commission members, what can we expect from that report, in view of:

The Commission was one year over due in being appointed.

The Commission is chaired by the Secretary of the Navy (or his representative), and we have recently undergone a change of Secretaries.

The Administration's position that no CDS; no expansion of ODS; no expansion of cargo preference; elimination of the Title XI program.

Answer. The one year delay in appointment of the Commissioners was of course in no way their own fault. The Administration's delay in making appointments may well have been grounded in the fact that it did not want an independent Congressionally appointed Commission making public findings about the increasing inadequacy of our merchant fleet to meet defense contingency requirements for commercial type sealift.

We are greatly encouraged by the fact that the Secretary of the Navy has designated the former Senator Jeremiah A. Denton as the Chairman of the Commission. We believe that the Chairman and members of the Commission have evidenced a determination to fully explore the condition of the entire U.S. maritime industry and to make meaningful recommendations as Congress intended when it created the Commission.

However, CASO believes that now is the time to act on the issues raised by S. 1183. Congress should not wait for the Commission's interim or final reports before taking action to revitalize the U.S. flag fleet.

Question 8. (a) What does it cost the government per year for each ship it maintains in the National Defense Reserve Fleet; and how many does it intend to acquire, at what price?

(b) Would enactment of Title reduce that cost by adding to the active fleet, and also ensuring the availability of more seafarers in time of national emergency?

Answer. Yes. We believe that legislation such as S. 1183 will make the U.S. flag fleet more competitive and ensure its presence. Without legislation, the fleet is likely to decline further, whether through business failures or reflagging, ultimately requiring greater expenditures by DOD to meet sealift needs.

Question 9. Under Title II an ODS operator would still be prohibited from having foreign affiliations in trades where it would be competing with another U.S. operator. The reason of course, is that the purpose of the ODS program is to enable our operators to compete with foreign carriers.

Is that reasoning still sound?

Answer. Foreign flag carriers presently serving United States liner trades are completely free to own and operate third flag foreign feeder vessels. The use of such ships reduces costs and often increases a company's marketing ability, particularly in smaller and less developed countries. To deny this same opportunity to U.S. flag vessels simply puts them at a competitive disadvantage in the marketplace. We therefore believe that legislation should be amended to permit U.S. flag carriers to use foreign flag feeders and as Mr. Rhein noted in his testimony, we are discussing this issue with leaders of U.S. maritime labor and others to develop a proposal for the Committee's consideration.

Question 10. (a) Do you agree that to strengthen the U.S. merchant marine Title II should provide an opportunity for all U.S. liners to become more competitive; and do you believe that Title II as drafted does so?

Answer. The answer to both questions is yes.

(b) Do you agree that to strengthen our merchant marine nothing in Title II should make it possible for subsidized operators to threaten the economic viability of our Jones Act fleet, and do you believe that, as drafted, Title II adequately protects our domestic fleet?

Answer. CASO believes that Title II adequately protects the domestic fleet. We note that Matson has alleged in its testimony that Title II may have an indirect adverse effect on it. We disagree with that allegation and would disagree with any suggestion that such allegations should slow down action on Title II.

(c) If the purpose of Title II is to strengthen the U.S. merchant marine, would it be self-defeating if we enacted selected parts of Title II which would benefit some liner segments, but not provide for or harm others?

Answer. Yes.

Question 11. (a) Do you believe the present number and mix of the active U.S. liner fleet and its crews is adequate to ensure that it carries a "substantial portion" of our international cargo; and that it will have sufficient manpower and vessels to meet our needs in time of national emergency?

Answer. No.

(b) If not, how many more liner vessels and seafarers do we need?

Answer. The long stated goal of the United States has been to have a liner fleet able to transport a "substantial" portion of our international trade. This has been repeatedly defined as 50 percent. The actual number of ships and seamen required to meet this goal will vary depending upon the types of ships utilized and the trades in which they are concentrated. However, at the present time we have approximately 100 U.S. flag liner ships in service and are carrying about 20 percent of our trade.

(c) Would we get them under Title II?

Answer. We believe that enactment and implementation of that law and other laws on cargo preference, etc. would reverse the present decline in the liner fleet and result in substantial expansion over time.

Question 12.

1. Although Title II directs the Secretary to enter into ODS contracts and amendments, aren't there practical and legal limitations that would limit the number and cost?

Demands of the market place. No operator is gong to apply for an ODS contract unless he believes the business is out there; and even then, subject to his minimum sailing requirements, he won't undertake additional voyages unless business warrants them. Since he would only receive ODS for actual sailing, a depressed market would reduce ODS payments.

The build foreign provisions in Title II would enable operators to build the most modern vesels and this would mean lowering manning levels, which in turn would reduce the payment of wage cost differential; and that element is about 90 percent of ODS payments.

Section 603(b) of the Merchant Marine Act empowers the Secretary to seek an agreement for payment of a lesser amount of subsidy than the maximum that would result from a calculation under the statutory criteria?

2. Taking into account these legal and practical limitations, what is your estimate of the added yearly cost to the government of Title II?

Answer. It is hard to estimate an exact number because as you correctly point out, there are a great many variables. One thing that is clear is that over time costs per vessel will dramatically decline. One estimate of the initial additional cost could be made by making several reasonable assumptions. First, assume that about 30 additional ships will come under ODS. Second, assume that about half of these are older unautomated steam powered ships requiring annual ODS of about $3.7 million, and that the other half are newer automated diesel powered ships requiring less than $3 million each in annual ODS expenditure. These assumptions would indicate additional ODS expenditures in the first several years of around $90 million per annum.

As soon as operators have a permanent right to acquire foreign built ships on the world market they will begin replacing their older most costly steam powered vessels. The new ships will require less ODS because of their smaller crews. In addition, the newer automated ships are far more productive. Thus, as the old fleet is phased out the cost of maintaining the capacity of the existing liner fleet while bringing all operators who want subsidy into the program, would probably cost little if any more than continuing existing contracts without change.

Further, enacting reforms necessary to keep vessels under U.S. flag means that U.S. corporate and personal income taxes would be paid by those companies and crew. That revenue would be lost to the Treasury if, through reflagging or by business failures of U.S. flag companies, our nation's foreign commerce ends up being served even more predominantly by foreign flag companies and crews.

Question 13. Since approximately 90 percent of ODS payments are attributable to the wage cost differential should new or amended ODS contracts under Title II be limited to that differential?

Answer. No—and we do not understand that Title II would make such a change.

Question 14. If Title II were to result in the ultimate demise of a smaller subsidized carriers such as Waterman, wouldn't the government be at cross purpose inasmuch as it would be paying subsidy to Waterman while Waterman was "going under"? Also, the government would have to make good any Title XI guarantees on Waterman vessels?

Answer. When he introduced S. 1183 Senator Breaux stated that it may be ". . . In the national interest to provide some of the smaller companies with trade route protection, because we do not want deregulation to be the cause of their demise . . ." We share this view and would support reasonable and equitable protection and assistance for operators where necessary.

Question 15. As I understand it, the average ODS payment per vessel is about $3.7 million. The new vessels which would come into service under Title II would have lower manning levels, and would reduce that $3.7 million per vessel to about $2 million, is that correct?

Answer. You are correct that there would be a substantial reduction in ODS costs per ship as older, non automated steam driven vesels are replaced by diesel powered automated ships. However, $2 million per ship for the new vessels is probably low. While it would vary according to a number of factors it would certainly be below $3 million per new ship.

Question 16. Proponents of trade route deregulation maintain that the distribution of ocean transportation services is best when left to the market place ad "deregulation of domestic transportation modes has generally shown"

On the other hand, there are those that maintain that route deregulation for our domestic airlines has caused bankruptcies and loss of service.

Answer. Under deregulation economically unattractive trade routes will presumably receive less U.S. flag service than will economically attractive routes. However, that is generally true even under the present trade route system. Many routes defined by the Maritime Administration are currently receiving little or no service because they are economically unattractive.

It must be remembered that operating differential subsidy simply reimburses the operator for the actual differential costs which he incurs by employing U.S. citizen seamen. ODS does not compensate for a lack of cargo, for inefficient operation, nor does it guarantee a profit. If our carriers are to be successful they must be free as are all of their foreign competitors to adjust their services to shifting cargo demands and trade patterns.

Question 17. Sea-Land has indicated it can support the reforms in Title II only if its provisions assuring Sea-Land opportunity to receive subsidy are retained. Would Sea-Land be disadvantaged if the reforms were made available to the subsidized operators, and Sea-Land remained unsubsidized?

Answer. We support ODS for Sea-Land. However, if for budget or other reasons, that cannot be achieved by Congress, Congress must recognize that roughly 90 percent of Sea-Land's competition is foreign flag. We would urge Congress to think carefully before deliberately postponing reforms needed by other U.S. flag carriers so that they can compete more effectively with foreign flag carriers when such a small percentage of Sea-land's competition is U.S. flag. Postponing such reforms for other U.S. flag carriers would have adverse implications for our national defense and economy.

Senator **Breaux**. Thank you very much. Mr. Hearn, glad to have you back.

Mr. **Hearn**. I am pleased to appear before you today to discuss Title I of S. 1183, both as a former commissioner and vice chairman of the Federal Maritime Commission, and also because of Waterman Steamship Corporation's interest in the U.S. merchant marine.

I find myself keenly aware of the importance of the issues dealt with in S. 1183. U.S. ports have been opened to vessels of all nations with virtually no limitations. U.S. flag vessels have confronted restrictions which impede our ability to attract cargo.

It is one thing to lose cargo because a U.S. flag vessel is not competitive on a cost basis. It is quite another for a U.S. flag carrier to lose business because we are not allowed to compete for it or because we are not allowed to offer services in a foreign nation, which that same nation's carriers are allowed to offer here in the United States.

Section 19(1)(b) of the Merchant Marine Act of 1920 granted the Federal Maritime Commission the authority to deal with the actions of foreign nations or of foreign vessel operators which create conditions unfavorable to the United States flag shipping.

This section 19 authority to deal with conditions fostered by the entities has been important to the Federal Maritime Commission in its efforts to redress unfair maritime trade practices of other nations and foreign flag carriers.

While section 19 has been a constructive force over the years, we now have the benefit of experience with that provision, and that experience supports the improvements which Title I will make to the FMC's ability to deal with unfair practices in ocean shipping.

In extending the reach of authority over practices of entities other than governments and carriers, Title I responds to problems the industry has experienced.

In expanding the information gathering powers of the Federal Maritime Commission in this area, while at the same time authorizing confidentiality of information gathered by the FMC, Title I both incorporates fairness for those required to furnish information and meets the potential objectives of the act.

By providing for expeditious procedures without imposing burdens of proof, which go beyond proof of unfair practices themselves, Title I will make the FMC more able to act before practices get out of hand and serious damage is already done.

Finally, the additional specific remedies authorized in Title I will show interested parties that unfair practices will be met with effective action.

Title I can be used aggressively by the Federal Maritime Commission to eliminate unfair foreign maritime trading practices. Water Steamship Corporation commends your efforts in S. 1183 to further the purposes of section 19 by creating an additional tool to the Commission so it can give to the U.S. flag carriers a fair chance in the competitive areas of international shipping.

By giving the FMC more specific and effective fact gathering procedural and remedial tools to encourage fair trade practices in the ocean foreign commerce of the United States, Title I can strengthen the U.S. merchant marine. Thank you, Mr. Chairman.

Senator **Breaux**. Thank you very much. Mr. Finnerty?

Mr. **Finnerty**. Sea-Land appreciates the opportunity to testify in support of Title I of S. 1183 to amend the Shipping Act of 1984 to strengthen and clarify the authority of the FMC to maintain healthy and efficient competitive conditions for liner shipping in the U.S. foreign commerce.

This policy initiative is timely and addresses an aspect of international liner trade that requires a clear indication of U.S. intentions. As the Members of this subcommittee are well aware, United States-flag carriers have pioneered intermodal transport.

The open competitive environment created by U.S. maritime, rail and motor carrier policies have greatly enhanced the efficiencies and service improvements first perceived with the advent of containerization on major foreign trade routes about 20 years ago.

Now as then, there is an unfortunate pattern of foreign resistance to fair and open competitive opportunity. As Chairman Breaux noted when introducing this legislation, some countries all too often give their national flags a competitive edge in our bilateral trades.

This heightened awareness of impediments to fair competition in international liner shipping emerges during a period when Congress and concerned citizens across our country are increasingly frustrated by foreign refusals to adhere to proper trading relations.

Some foreign governments are beginning to establish more formalized policy structures to promote improved competitive liner shipping markets. For example, the European community. But practically all countries abroad presently follow less pro-competitive policies than does the United States.

The status of foreign law on liner shipping is changing. A review conference of the UNCTAD Convention on the Code of Conduct for Liner Conferences is scheduled for 1988 in Geneva. The United States is expected to meet with the Consultative Shipping Group governments of Europe and Japan in September of this year. The Common Market approved competition rules only in December of 1986. The Canadian Parliament in now considering legislation to revise their own Shipping Conferences Exemption Act. These activities present a wide variety of policy approaches to setting competitive conditions in liner shipping.

They would benefit from continued U.S. leadership, demonstrating the type of fair policy improvements as contained in S. 1183.

Congress has distinguished itself in the past by displaying the foresight to introduce important new maritime policy innovations despite claims by some abroad that such U.S. attention to carrier and shipper interests was not necessary.

Enactment of the State Controlled Carrier Act is an excellent example. Enactment of section 13(b)(5) in 1984 is another such example.

The FMC should be commended for its diligent efforts to counter foreign discriminatory practices under existing authority. Sea-Land supports Title I of S. 1183 as a further advance in clarifying the FMC's jurisdiction and authority over the through intermodal transport system that increasingly characterizes U.S. international liner commerce.

The clarified authority of the FMC to investigate and analyze foreign maritime policy regimes and foreign carrier practices that create unfair trade circumstances will enable the agency to improve the base of information about this important problem.

The type of remedial steps the bill would clarify for the FMC are logical corrective powers to address emerging areas of foreign discrimination, including activities beyond vessel operations, such as terminal operations, limits on sales activities abroad, inland trucking, equipment usage, and licensing practices.

A clarified FMC authority would assist negotiations by the U.S. government seeking elimination of foreign barriers.

We wish to urge added clarification of the aspect of the bill that relates to shoreside activities. The language of the bill authorized the FMC to take action limited to "foreign carriers."

We suggest that sanctions should, when appropriate, reach subsidiaries, affiliates and other related entities of foreign carriers and other persons.

As we understand section 102(e) of this bill, a foreign carrier could not avoid implementation of this provision by changing the registry of its ships to a country other than the country where the government or carrier maintains a discriminatory practice.

We encourage the subcommittee to confirm that the FMC must look beyond flag of registry in administering this provision, so the FMC will not be prevented from taking action to counter discriminatory practices where they operate to the detriment of a U.S. carrier.

Because our business success depends heavily on open trade, free of inter-governmental tensions, we hope that the Title I sanctions will have to be resorted to only rarely, if ever. We think there is a reasonable basis for that hope.

History suggests that providing these powers to the Commission will in and of itself further the desired results. That is what has basically occurred under the State Controlled Carrier Act.

We appreciate this opportunity to testify in favor of Title I of S. 1183 and I would be anxious to respond to any questions the subcommittee may have.

Senator BREAUX. Thank you. Mr. Grehan?

Mr. GREHAN. Mr. Chairman, I am pleased to appear before the committee today to comment on Title I of S. 1183, which we support.

Like you, Mr. Chairman, Central Gulf Lines regrets the fact that approximately 79 percent of the liner cargoes moving in U.S. ocean liner trades is currently transported in foreign flag vessels.

Like you, we believe that in large part this results from laws and practices of this Nation's trading partners which are designed to give, and effectively give, their national flag vessels, or foreign flag vessels controlled by their citizens, a competitive advantage or an actual lock on significant portions of our imports and exports.

Finally, like you, Central Gulf is trying to do something about this debilitating dilemma. Recently we scored at least a modest initial success.

In 1985 we worked cooperatively with the U.S. Trade Representative to urge the Japanese government to take steps which would assure that a reasonable percentage of the millions of automobiles Japanese manufacturers export to the United States each year are transported in U.S. flag vessels manned by U.S. crews.

In 1986, for example, nearly 2.3 million automobiles were imported in the United States from Japan, and almost all of them were transported on Japanese flag vessels or foreign flag vessels owned or controlled by Japanese companies. None were transported on U.S. flag vessels.

The negotiations with the Japanese were lengthy, complicated and difficult. But finally last year the Japanese government agreed to let three of its largest car manufacturers utilize four U.S. flag automobile carriers to transport roughly 10 percent of Japan's future annual automobile exports to this country

At that point, the right to participate in the new program was opened to all interested U.S. flag bidders, and ultimately Central Gulf was awarded two of the new transportation contracts.

We are investing roughly $50 million in the construction of two new car carrier vessels, and late this year we expect to commence the regular voyages between Japan and the United States with our U.S. crews.

While Japan's response in this instance was positive, the U.S. plainly has reason to believe it is not yet sufficient. The percentage of Japanese automobile exports to be transported in U.S. flag ships is still too small. It should be increased significantly.

Moreover, there are other nations, Korea and Germany, for example, which likewise exports huge numbers of automobiles to this country each year, none of which are transported on U.S. flag vessels manned by U.S. crews.

There is no valid reason why each of these other foreign nations should not follow Japan's lead and agree forthwith to eliminate, or at least alleviate this grave trade inequity. Progress of this kind would lead to a substantial increase in the movement of foreign exports to the United States in U.S. flag vessels manned by U.S. seamen.

I refer to our recent experience in these matters, Mr. Chairman, because while Central Gulf appreciates and totally supports the objective you are seeking to accomplish through Title I of S. 1183, we truly believe that ultimately more might be accomplished through continuous, forceful, friendly negotiations with our major trading partners than through a program of hostile Federal investigations and possibly self-defeating punitive actions alone.

Almost invariably, such actions lead to some form of retaliation against American interests in the foreign nation involved, so that any gains previously accomplished through normal trade or diplomatic channels may be abruptly eliminated.

For example, we fear that much of what was recently gained for the U.S. merchant marine and U.S. seamen through the aforesaid forceful, persistent negotiations with Japan could be adversely affected or lost if, under Title I of S. 1183, the Federal Maritime Commission took some well-meant but nevertheless self-defeating punitive action against that nation to its shipping interests in this country.

Perhaps the solution lies in a congressional mandate to the President, the State Department, and the Trade Representative immediately to commence vigorous, insistent negotiations with each of the major offending foreign nations for prompt removal, or at least alleviation of these foreign laws, regulations or practices that are most damaging to the U.S. merchant marine.

In this regard, for example, section 197 of HR 3, the House Trade bill, contains a negotiation directive to the President which Central Gulf believes will be effective in its continuing negotiations with foreign nations to relax their unjustifiable, monopolistic grip on the ocean transportation of their automobile exports to the United States.

A copy of that section of the House bill is attached for your consideration. We urge the committee to include it, or something like it, in the Senate version of the pending trade legislation.

The type of negotiation provisions we envision for addition to S. 1183 would also require the President to make semi-annual reports to the Congress on the progress of the congressionally mandated negotiations, and whether those negotiations are resulting in removal of discriminatory practices and new benefits to the U.S. merchant marine.

In any case, where no meaningful progress has been made through negotiations, the matter would then automatically be remitted to the FMC under S. 1183 for investigation and possible punitive action.

Hopefully this two step procedure would reduce both the increased regulatory burden on the Commission and the costs necessarily connected therewith for the Federal Government. Hopefully too this would lead to fewer hostile confrontations between the United States and some of its major trading partners.

There are other even more effective actions the committee and the Congress could take in this area which Central Gulf believe would be of great benefit to the United States, the merchant marine, and our nation's balance of trade.

First, all Federal agencies subject to the Federal preference cargo laws should be required to comply with those statutes fully and effectively in all transactions covered thereby. Perhaps the secretary of transportation or the Maritime Commission could investigate and police the Federal agencies in this regard.

Senator Inouye's S. 145 and S. 147 introduced last January are relevant to this proposal.

Secondly, some of this nation's major trading partners have historically maintained cargo reservation systems that require various portions of their general cargo exports to be transported in their own flag vessels.

The United States could adopt a similar program, with the restriction that cargo reservation applies only when U.S. flag vessels are available to transport the reserved portion at a competitive rate level.

This, of course, would prevent U.S. shippers from paying rates that are higher than those otherwise available in the marketplace.

Third, Central Gulf is presently underwriting a university study of the feasibility, costs and possible benefits that would flow from a system of Federally affordable income tax credits for U.S. shippers that utilize U.S. flag vessels manned by U.S. crews to transport their exports.

Such a program would surely significantly increase the volume of U.S. export cargoes carried on U.S. flag vessels, and it would result in ocean transportation benefits to our nation's balance of trade and balance of payments, while it simultaneously provides jobs for U.S. seaman and hopefully stimulates new U.S. flag company tax payments to the treasury.

We thank the committee for permitting us to express our position on this important legislation, and I shall be pleased to answer any questions you may have.

Senator **Breaux**. Thank you, gentlemen, for your presentations. Let me ask a question about the type of practices or programs that we have in the United States to assist our shipping industry. The ODS is one obvious one.

Is that an inappropriate thing to look into if other countries have operating subsidies or if they have tax preferences for their shipping companies, or if they have other government assistance programs?

Or should we be limiting our legislation to trade practices that are not economic assistance practices? And can we separate the two?

I am concerned about somebody from some other country saying, oh great, Senator, you got a bill to investigate our practices that are designed to help our national shipping company. But what about your ODS program?

Are you not spending hundreds of millions of dollars annually to help your own companies, and is that not an unfair trade practice?

Mr. **Hearn**. If that does not discriminate another foreign country, we think that would be the criterion, Mr. Chairman.

If it helps an American flag steamship company, and is not out to provide a harm for a foreigner like most of these unfair practices that we are talking about here today, or directed against an unfair thing against an American flag carrier.

The ODS program is to help the American flag carrier, and at the same time hindering a foreign flag carrier. So I would think, in answer to that and in answer to your second question, anything that pertains possibly to the merchant marine business or maritime business, whether it was a tax or an intermodal trucking operation in a foreign country.

However it might be related to foreign commerce of the United States, would come under the jurisdiction of Title I.

Mr. GREHAN. I think the ODS can be separated, because I think it is perceived by the rest of the world as being an equivalency factor to allow American shipping to be competitive on rates.

So I think that they do not consider that to be an unfair trade practice. I think they consider that to be a method by which we equate or make our ship rates equally competitive.

Senator BREAUX. What about the Jones Act reservations for domestic carriers? How do we handle that with regard to other countries' inability to get into that market?

Mr. GREHAN. Well, it is my understanding, Mr. Chairman, that most of these countries that we are trading with had their own Jones Act provisions, so they really are protecting themselves and we protect ourselves on that.

Mr. FINNERTY. Mr. Chairman, I think on that latter point it is well recognized that foreign countries, in many instances, have their own laws.

I do not think that the reach of this proposal would be such as to try and upset those particular requirements, as opposed to such things as are normally thought of to be in the intermodal activities on land such as terminal operations, the use of such intermodal activities as container movements by rail or by truck, and other similar intermodal related activities. I think that one would view the domestic water transport scheme abroad in a different light.

Senator BREAUX. You mention intermodal problems. From your perspective, why is it an unfair practice for a foreign country that we deliver goods to their port to say that we want to make sure that our trucking companies, our trains are able to carry those products once they reach port of call for a particular foreign country?

Why, in your opinion, would that be something that you should have access to from an intermodal transportation point?

Mr. MAY. One way to answer that question is by an illustration.

Let us assume that you have a factory in central Louisiana, and a truck brings you products from overseas and picks up your products and takes them to be delivered overseas. And you see that that is the XYZ trucking company.

You deal with that trucker. You deal with the managers of that trucking company. You book your freight with them. You see their ads. You get their circulars. They are the human beings with whom you have direct contact.

You may not know or have contact with the steamship company that takes the goods at the port. On the other hand, if you are dealing directly with a subsidiary of a U.S. steamship company you will know that you are dealing say with a Lykes truck, and Lykes people, this makes it much easier for Lykes to market to you and attract you to their services.

Mr. FINNERTY. Senator, I would like to respond in a similar way, but to take it a step further.

Let us offer the example of country X. And in country X let us say that they have a rule that does not allow American carriers to engage in the array of shoreside and container and intermodal related activities.

Their requirements would be such as to mandate that we use the services of country X's agents, their trucking companies, et cetera.

What happens on occasion, and I can not say this universally, but as a general rule in certain countries, is that a different set of prices apply in terms of what the American carrier is charged for some of these services and what the carriers in that country are charged.

There are even some circumstance where the practical situation is that one of your competitors in the trade, through an affiliated company, is providing these landside activities.

This can place the American competitor at a disadvantage in terms of competition, but also result in a difficulty that prevents an advance of the service involved. It inhibits the progress of the intermodal activity.

Senator **Breaux**. Can you give the committee examples of situations where we have countries that export materials to the United States, that bring them to the final destination through intermodal transportation, trucks or trains or what have you, that do not allow us to do the same type of intermodal connections in their countries?

Mr. **Finnerty**. I think that we could supply a response to that question. I can not provide it at the moment, but I am certain that there are examples where that situation applies.

Mr. **May**. I have been told by some of our carriers that that situation exists in Taiwan today. That you can not own and operate your own trucking company in Taiwan.

On the other hand, Taiwanese carriers in the United States are perfectly free to do that, if they wish to. And as Peter says, I am sure that there are others.

Mr. **Finnerty**. The other point, I think, that has to be made in the context of the proposal is, that obviously a sovereign country abroad can decide what it is or is not going to do.

The point is, however, that if that is the basis upon which they wish to set the competitive rules, then those same rules should apply to their carriers and their related persons in this country.

Senator **Breaux**. Mr. Grehan, when Mr. Gaughan testified I think one of the points that he made, and I quote him, "is that we believe the existing statutory authorities of the Commission are adequate."

I take it from your testimony that you feel that is also correct. Because in your testimony you say, thanks for Title I, but we truly believe that ultimately more might be accomplished through continuous, forceful, friendly negotiations with our major trading partners, rather than through a program of hostile Federal investigations and possibly self-defeating punitive actions alone.

And that is pretty strong, in the sense that you are saying you would rather negotiate it out rather than have our government participate in that.

It seems that there are an awful lot of practices that are currently inhibiting our ability to serve these countries that are not being resolved through friendly negotiations.

Mr. **Grehan**. Mr. Chairman, I agree that there are certain practices that are probably more appropriately handled by the FMC.

But when it comes to, I think, a major inequity, such as the Japanese or the European or Korean export factor on their automobiles, that the first step might be to continue negotiating with them at a higher level, to see if we cannot find a true solution as opposed to reacting punitively that might upset some of the progress we are already into here.

And I do not disagree that a lot more has to be done in terms of impetus and initiative on the part of the government, because that is the only place where it is going to be effective.

And I guess we are trying to find, like you are, where the best place would be to seek that help.

Senator BREAUX. Senator Stevens is here, and we are pleased to have him. And I wonder if he has any questions of this panel?

Senator STEVENS. Mr. Chairman, I do congratulate you for your bill.

We have been across this bridge before. I will be pleased to work with you, as my statement indicates.

I do not have any questions. I am pretty well briefed about what you are doing. I think your bill is a very interesting approach, the mirror concept, which we have been after for a long time.

Nice to see you all here.

Senator BREAUX. I thank the Senator for his comments. We have all been around this business for awhile.

Gentlemen, we thank you. We may have some additional questions that we will be submitting, and we would want your response to them.

We welcome up Mr. Frank Drozak, representing of course, as President, of Seafarers International. And also I think we have Mr. Karl Landgrebe, who is special assistant to the president of Marine Engineersmen official association.

Gentlemen, we are pleased to have you. Mr. Drozak, we know that you just came in from overseas, so we appreciate your being able to fly in and be with us this afternoon.

Frank, we have you listed first, so you go ahead.

STATEMENTS OF FRANK DROZAK, PRESIDENT, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO; AND KARL M. LANDGREBE, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

Mr. DROZAK. Mr. Chairman and members of the subcommittee:

I am President of the Seafarers International Union which represents unlicensed seamen employed on vessels engaged in this nation's domestic and international shipping trade.

We wish to thank you for the opportunity to testify. The SIU believes that there is an urgent need for comprehensive legislation that will allow U.S. flag carriers to once again carry a sufficient portion of this nation's international commerce.

The decline in the U.S. merchant fleet is witnessed by the loss of ships and jobs in the fleet between 1976 and 1987. During this time, the active private fleet declined from 526 vessels to 360 active vessels, or about 31 percent.

In 1976, there were 22,700 shipboard jobs in the merchant fleet. In 1986, there were 14,300 jobs, a decline of 37 percent.

As you know, there are a variety of international shipping practices preventing U.S. flag vessels from providing efficient price-competitive deliveries of cargoes.

These practices include licensing, regulation, technical restrictions, government control of commercial cargo, government ownership of vessels, and the use of cheap labor working in unsafe and unacceptable conditions, and do not accept human rights or workers' rights.

The legislation being considered by this subcommittee today would help to eliminate many of the unfair trade practices facing the U.S. flag fleet.

This is important since the practice of preventing U.S. flag carriers access to cargo wastes money and harms U.S. carriers.

Restriction in foreign countries on the use of equipment developed for modern vessel operations hamper the efficiency of U.S. flag carriers.

U.S. flag carriers have developed technology and operating systems which increase service and efficiency, but many countries do not allow their use.

State-owned fleets have also changed their established international shipping structure.

The expansion of state-owned or operated fleets is witnessed particularly by the rapid expansions of government owned tankers. Since 1979, state-owned tanker fleets have expanded by over 25 percent.

Japanese automobile manufacturers have failed to transport automobiles on U.S. flag vessels. Besides Japan, there are nine other countries producing automobiles for export to the United States, using their national flag vessels to transport them.

Taiwan and Korea do not allow U.S. flag carriers to provide intermodal service to their countries.

Unfair labor practices are also a factor in international shipping. Present conditions on some flag of convenience and state-controlled ships are often abominable. Poor conditions and low wages contribute to low operating costs and artificially suppressed freight rates.

The United States must, to survive, protect its military forces and economy into every region of the world. Every country that depends on this global presence has ensured that their fleet expand and support their fleet with cargo.

A variety of methods are used, including cargo preference; a reservation for both commercial and government cargoes; bilateral agreements; and direct financial aid or assistance to ship using national flag lines.

The one similarity between all these schemes is that significant volumes of commercial cargo are provided.

American flag vessels now carry only four percent of this country's cargo. In contrast, some foreign countries reserve 100 percent of commercial cargo for national flag vessels.

The UNCTAD code favors reserving 40 percent of commercial cargo for national flag lines. France reserves 66 percent of oil imports for French flag vessels.

Indonesia requires 45 percent of all cargo to be on Indonesia flag vessels. These are substantial volumes of cargo, and indicate a strong commitment by the country to the development and maintenance of a national flag fleet.

The U.S. Government should require that 50 percent of imports be on U.S. flag vessels. This is the remedy that the U.S. flag fleet would require.

Despite the acceptance of commercial reservations in the international shipping community, the U.S. Government does not assist U.S. flag vessels in securing commercial cargoes. Instead, only limited attempts are made to provide free access to all countries to the international water borne cargo entering and leaving the United States.

These efforts have been largely unsuccessful, and have not provided the cargoes necessary for an adequate U.S. merchant fleet.

While allowing the U.S. merchant marine to falter, the United States has provided assistance to other modes of transportation. The United States has developed a national system on interstate and defense highways, so named because of their primary importance to the national defense, through generous appropriation.

The development of the railroads in the last century was spurred by government land grants. More recent efforts by the government have included ownership and operation of Amtrak and Conrail.

In contrast, the United States only supports its merchant fleet during time of crisis. During peace time, the fleet is required to fend for its cargoes, in an international marketplace dominated by countries that willingly support their fleets, and provide cargo to national flag vessels.

The remedy for the too small merchant fleet that has resulted is clear, and is practiced by every country in the world. That remedy is the provision of commercial cargo.

There are a number of means of providing cargo employed through the world and the United States may find it in its best interest to accept a variety of these schemes.

The only crucial factor is that enough cargo is provided to ensure that there will be a U.S. flag fleet capable of carrying out our defense objectives.

Mr. Chairman, I am aware that the subcommittee held a hearing yesterday morning on Title II of this legislation pertaining to operating subsidy reform. I did not return from the trip overseas as you well know in time to appear and testify on that section.

And I would like to just spend a minute or two on that if I could. If you and other members have no objection, I would like to take a few minutes to express my opinion.

Since the early 1970s American liners companies have been reduced by one-half. Beginning with this decade, we have witnessed the authorization of no new subsidy contract. For selected operators already receiving subsidy, we have permitted the rules to be changed in the middle of the game, with the expectation of positive results for the fleet.

Such proposals have been flawed, and have not yielded long term benefits. The reason for this is obvious: The lack of a consistent, continuing, fair, and effective national maritime policy.

I am encouraged by the inclusion of Title II in S. 1183, which calls for the reactivation of the operating differential subsidy program, committing unsubsidized operators to apply for assistance and relaxing the regulatory involvement.

We are pleased with this proposal. However, careful consideration must be given to what items are included in the reform package.

One of the key elements of this legislation is the extension of the subsidy to foreign built vessels. While we are reluctant to endorse the payment of operating subsidy for foreign built vessels, the absence of a government assistance vessels construction program provides no other choice.

These vessels should also be immediately eligible for cargo—government preference cargo. While renewal of the operating subsidy program will encourage the revitalization of the U.S. fleet, and the U.S. fleet must be competitive with the fleets of our trading partners, streamlining the regulatory environment is therefore essential.

And we endorse eliminating strictly regulated trade routes. However, in doing this, we must not jeapordize the financial and economic wellbeing of the small Atlantic operators.

In easing the regulatory environment, we must also be cautious about the potential infringement on the domestic trade. In light of the domestic changes in the marketplace brought on by the demise of two American flag liner companies in the last year, we believe that this issue should be given a complete review to ensure that all carriers, regardless of their subsidy status, are treated in a fair and equitable manner.

Mr. Chairman, in the recent missile attack on the U.S. Navy vessel in the Persian Gulf, the reported intention of the Kuwait government to reflag part of its tanker fleet under U.S. laws in order to have U.S. Navy protection, and the ceremonies in which we participated today honoring the merchant seamen who gave their lives for our country, serves as a reminder that the United States must maintain a commercial fleet capable of meeting our defense and economic needs.

Sadly, we do not have such a fleet today. The decline of the U.S. flag fleet has been addressed once again by this administration, in recognizing that the execution of U.S. strategy depends on the ability to reinforce and resupply forward deployed forces, the Administration's knowledge that sealift will be responsible for carrying out this goal.

The time has come for an effective policy that will ensure a strong merchant fleet to our nation. Therefore, in conclusion, the Seafarers' International Union respectfully requests the subcommittee to act quickly to solve the problems facing the U.S. flag carriers.

The Seafarers' International Union fears that without remedial legislation, the U.S. flag fleet will not be operating in international commerce in the next decade.

Thank you, Mr. Chairman, and I am prepared to answer any questions.

[The statement follows:]

STATEMENT OF FRANK DROZAK, PRESIDENT, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

Mr. Chairman and Members of the Subcommittee: My name is Frank Drozak. I am President of the Seafarers International Union of North America, AFL-CIO, which represents unlicensed seamen employed on vessels engaged in this nation's domestic and international shipping trades. We wish to thank you for the opportunity to present our views on S. 1183, legislation designed to remedy maritime trade problems and to reestablish the operating differential subsidy program.

The Seafarers International Union believes that there is an urgent need for comprehensive legislation that will allow U.S. flag carriers to once again carry a significant portion of this nation's international commerce. The SIU further believes that the unfair trade practices of other countries have significantly restricted the availability of cargo and the U.S. government's failure to support the fleet through subsides in recent years has also prevented the full participation of U.S.-flag carriers in the international trades. My statement will describe some of the trade barriers being faced, and why strong legislation is needed to remedy the problems. I also will address the problems facing the U.S. liner industry and the need to revise the operating differential subsidy program in order to make it an effective tool for our fleet.

TITLE I—FOREIGN SHIPPING PRACTICES ACT

The decline in the U.S. merchant fleet is witnessed by the loss of ships and jobs in the fleet between 1976 and 1986. During this time, the active private fleet declined from 521 vessels to 381 vessels or by 27 percent, including a decline in the tanker fleet from 217 to 190 or a decline of 12 percent. The loss in employment has been even more dramatic. In 1976, there were 22,700 shipboard jobs in the merchant fleet, and in 1986, these were 14,300 jobs, a decline of 37 percent.

As you are aware, there are a variety of international shipping practices that prevent U.S.-flag vessels from providing efficient and price competitive delivery of cargoes. These practices include licensing regulations, technical restrictions, government control of commercial cargoes, government ownership of vessels, and the use of cheap labor working in unsafe and unacceptable working conditions.

Fair and equal access to cargoes is the most important factor in world shipping. Without this access, there cannot be a viable U.S merchant fleet. Unfortunately, several countries either through a formal governmental process or through informal industry cartels control how cargo is shipped and require that it be shipped on national-flag vessels of foreign-flag vessels under their financial control. The SIU is keenly aware that government provision of cargo is perhaps the most widely accepted means of developing a fleet for national economic and security purposes. However, we are increasingly concerned with the informal cartel arrangements where national companies or cartels of companies favor national shipping lines. These informal arrangements are difficult to treat under America's trade laws and in many cases are only discernible because of the consistent denial of cargo to U.S.-flag carriers.

Licensing and regulatory restrictions by foreign governments often make it impossible for U.S.-flag carriers to enter into a market or operate profitably, although they are not obviously designed to prevent American vessels from participating in the carriage of cargo. America's system of government allows parties, both foreign and American, to comment on proposed legislation or regulatory changes which would affect them. Conversely, many foreign governments permit comments only from national interests during their drafting of laws or regulations, and routinely develop policies favoring national companies.

Restrictions in foreign countries on the use of equipment developed for modern vessel operations have also hampered the efficiency of U.S.-flag carriers. U.S.-flag carriers have often developed technology or operating systems which greatly increase service and efficiency, including the introduction of containerized cargo, LASH vessels, double stack trains and other intermodal advances. The competitive advantages resulting from advanced technology or systems is often nullified by foreign governments which often delay the use by U.S.-flag carriers of new equipment or systems. These delays allow their own national-flag carriers the opportunity to adopt the new technology before the American-flag carrier expands its market share. In other cases, the national-flag line does not adopt the technology and the country refuses to accept the use of this advanced technology or service. The result is that U.S.-flag competitive advantage are eliminated and the company's operations are disrupted.

State-owned fleets have also changed the established international shipping structure. Presently, most maritime analysts believe that there is a surplus of shipping capacity in the international trades. Despite this surplus, many nations that operate their own fleets continue to expand their tonnage. This is particularly damaging to U.S. carriers that depend on a fair market to allow them to operate profitably. State-owned fleets are not established to make a profit or fill a demand as are privately operated vessels. as a result, these fleets do not have to earn profits to continue to operate.

State-owned fleets operating on a particular trade route often contribute to overtonnaging on that route, which may reduce the available charter or freight rates for competing private commercial vessels. As a result, private vessels that service that route may have difficulty operating profitably. Additionally, the presence of a state-owned or operated fleets often results in the government directing commercial cargo to their vessels.

The expansion of state-owned or operated fleets is witnessed by the particularly rapid expansion of government-owned tankers. Since 1979, state-run tanker fleets have expanded by over 25 percent. Between 1979 and 1984, Kuwait increased its fleet by 42 percent, Iran by 66 percent, Venezuela by 42 percent, and Indonesia by 120 percent. These rapid expansions occurred despite a particularly severe depression in the tanker industry. The SIU believes that the addition of these vessels is contributing to the length and severity of that depression.

A glaring example of the operation of state-controlled fleets is the control of the transportation of oil and refined products. Oil producing and exporting countries increased their refinery capacity at the same time that they were building tanker fleets to tranport refined products. The result has been that these countries now carry the oil products which were once carried by American-flag vessels. This policy has cost jobs in both the maritime anf refining industries.

I would now like to discuss some of those countries with significant barriers that restrict the ability of U.S.-flag carriers to operate profitably. In discussing these countries, I hope to illustrate the breadth of the problem as well as the variety of actual trade restrictions.

Japan's restrictions on trade have been subject to continuous scrutiny by the Congress. One of the more egregious examples of unfair trade is the failure of Japanese automobile manufacturers to transport automobiles on U.S.-flag vessels. Besides Japan, the other nine countries producing automobiles for export to the United States utilize their national-flag vessels to transport them. The House Merchant Marine and Fisheries Committee, after hearing testimony on this subject last year, concluded that U.S. operators are being systematically excluded from the trade and that legislation requiring the Japanese to discontinue the practice of reserving this cargo for Japanese-flag vessels was necessary. In addition, Senator Frank Murkowski has introduced S. 1087 to counter the restrictions on the transportation of automobiles practiced by every country exporting automobiles to the United States.

The restrictions on high-cube or oversized shipping containers on Japanese roads are of particular concern to the SIU. Since the early 1970's, American-flag carriers have attempted to utilize these containers in the carriage of cargo to and from Japan. However, restrictions on the use of these containers have prevented their widespread use in Japan. Repeated inquiries by the Federal Maritime Commission have yielded very few concessions.

Taiwan and Korea, significant and growing trade partners on the Pacific Rim, have significantly reduced the opportunities for U.S.-flag vessel operators who attempt to service markets through intermodal connections. A recent development in international shipping is a U.S. liner vessel delivering cargo with door-to-door service. This requires the carrier to arrange and coordinate for water, railroad and truck movements, as well as handle freight forwarder services.

Taiwan and Korea have prevented U.S.-flag carriers from providing this type of service in their markets. Their carriers provide door-to-door service in the United States because the United States does not have restrictions on who can deliver intermodal services. Taiwan laws prohibit foreign nationals from acquiring a license to operate trucking services in Taiwan. Korean law prohibits ownership of trucks. These restrictions place U.S.-flag carriers at a significant operational disadvantage, since Taiwan-flag or Korean-flag carriers freely provide container related and trucking services either directly or through their own integrated subsidiaries in their home markets and in the United States.

Additionally, the Taiwanese Shipping Enterprise Act and related regulations prohibit a branch of a U.S.-flag carrier operating in Taiwan from engaging in intermodal activities, including acting as a shipping agent, container terminal operator or sea cargo forwarder. At two of the three major port facilities in Taiwan, China Container Terminal Corporation, a partly government-owned company holds a monopoly on port services. Such services include shipside container operations, stuffing, and operating the freight station and related equipment. These services are provided at a higher cost and are less efficient than could be provided by an integrated company's operations, and are a burden on otherwise efficient U.S.-flag carriers.

The People's Republic of China presents several barriers to firms attempting to enter its markets because of its closes trading system. China's trading system suffers from a serious lack of transparency. This confused systems makes it difficult to discover which officials and organizations within China's trading system have the authority to make decisions or to spend foreign exchange. Any U.S.-flag carrier attempting to operate in China must incur enormous expenditures of time and money; often these attempts do not yield business and are a waste of money.

Mexico, through administrative actions, has erected several provisions that significantly benefit Mexican-flag vessels. These actions include the approval of applications for import licenses, with the provision that the goods covered by the application be imported in Mexican-flag vessels. Mexico allows impoat quotas on various commodities to be expanded, but only if the imports are carried on Mexican-flag vessels. Mexico also imposes different taxes on cargo depending on whether a Mexican-flag vessel is used. These regulations effectively deny access of foreign-flag vessels to Mexican cargo.

Venezuela has erected several measures to favor the national shipping line. First, shippers must obtain insurance for freight with a Venezuelan insurance carrier. Second, Venezuelan-flag carriers receive rebates on wharfage fees and pilot fees, thereby giving them a cost advantage over third-flag vessels.

Mr. Chairman, the SIU feels that the issue of unfair labor practices in international shipping should also be considered by this Subcommittee. Present conditions on some flag-of-convenience and state-controlled vessels are often abominable. The pay is substandard and the conditions under which the seamen must work are unacceptable. Unlicensed Chinese seamen receive $25/month, whereas the minimum pay rate sanctioned by the International Labor Organization is $205.45/month.

These poor conditions and low wages often contribute significantly to low operating costs. American-flag operators have demonstrated that through improved technology, more efficient management systems, and the use of well trained crews that they can provide reasonably priced service. However, the presence of underpaid labor artificially suppresses freight rates and can make a competitive vessel unprofitable. The SIU believes that this Subcommittee should scrutinize the issue of unfair labor practices in waterborne commerce and fashion a trade remedy for those conditions.

I have discussed the maritime industry's international trade problems in my testimony as if the maritime industry was an industry like any other in this country. Unfortunately, its decline does not only mean that jobs will be lost or industries bankrupted. You know, as well as I, that this nation's economic prosperity and national security depend on a strong merchant fleet. The United States must, to survive, project its military forces and economy into every region of the world. Other countries that depend on this global presence depend on a merchant fleet, and have ensured that their fleets expand.

These countries have ensured fleet expansion by guaranteeing cargo to their vessels. A variety of methods are used including cargo preference or reservation for both commercial and governmental cargoes. Bilateral agreements ensure that national-flag carriers carry a significant share of the cargo. Direct financial aid or assistance to shippers using national-flag lines is often employed. In other countries, industries recognize the need for a viable merchant marine and utilize their country's national-flag vessels. The one similarity between all these schemes is that significant volumes of commercial cargo are provided to national-flag lines.

American-flag vessels now carry approximately four percent of this country's cargo. In contrast, some countries reserve 100 percent of commercial cargo for national-flag vessels. The UNCTAD Code favors reserving 40 percent of commercial cargo for national-flag lines. France reserves 66 percent of oil imports and 40 percent of coal imports for French-flag vessels. Indonesia requires 45 percent of all cargoes to be on Indonesian-flag vessels. These are substantial volumes of cargo, and indicate a strong commitment by the country to the development and maintenance of a national-flag fleet.

Despite the acceptance of commercial reservation in the international shipping community, the U.S. government does not assist U.S.-flag vessels in securing commercial cargoes. Instead, only limited attempts are made to provide free access for all countries to the international waterborne cargo entering and leaving the United States. These efforts have been largely unsuccessful and have not provided the cargoes necessary for an adequate U.S. merchant fleet.

The United States has supported the U.S.-flag fleet with subsidies and the provision of a share of government generated cargo. The volumes provided, however, are a bare fraction of what will be transported during a conflict and are insufficient to maintain the base of seagoing vessels and men that will be needed during a national emergency.

At the same time the U.S.-flag fleet has fallen precipitously, the U.S. Navy has expanded. One of its goals is to protect the vital supply lines linking America and its allies. Unfortunately, there will be very few U.S.-flag vessels available to deliver the supplies. Remedying this will require a rapid change in the leval of support provided to the U.S.-flag fleet. Without such a change, the United States will be unable to carry out its defense strategy and will not be able to protect America by protecting its allies overseas.

While allowing the merchant marine to falter, the United States has provided assistance to other modes of transportation. The United States has developed a "National System of Interstate and Defense Highways, so named because of [their] primary importance to the national defense" through generous appropriations. The development of the railroads in the last century was spurred by government land grants. More recent efforts by the government have included ownership and operation of AMTRAK and Conrail. In contrast, the United States only supports its merchant fleet during times of crisis, during peacetime the fleet is required to fend for cargoes in an international marketplace; a marketplace dominated by countries that willingly support their fleets and provide cargoes to national-flag vessels.

The remedy for the too small merchant fleet that has resulted is clear and is practiced by every country in the world, that remedy is the provision of commercial cargo. There are a number of time tested means of providing cargo employed throughout the world and the United States may find it in its best interest to accept a variety of these schemes. The only crucial factor is that enough cargo is provided to ensure that there will be a U.S.-flag fleet capable of carrying out defense objectives.

The legislation being considered by this Subcommittee today would help to eliminate many of the unfair trade practices facing the U.S.-flag fleet previously discussed in my statement. This is important, since the practices preventing U.S.-flag carriers access to cargoes result in economic inefficiencies without aiding the national interest, and the SIU supports this goal.

The SIU would also like to suggest some perfecting amendments to Title I that may be necessary to fully effectuate the purpose of this legislation. First, the SIU believes that reasonable time constraints within which the Federal Maritime Commission must take action must be included. As demonstrated by both the problems in using high-cube containers and the refusal of Japanese companies to use U.S.-flag carriers to transport tobacco for nearly twenty years, even sustained government pressure does not necessarily provide fair trading opportunities. Second, the existence of flag-of-convenience vessels owned and operated by companies located in countries with significant trade barriers may make this legislation difficult to enforce. The SIU believes that documentation, beneficial ownership and the nationality of the crew should be considered in determining the nationality of the vessel and whether penalties can be assessed against a particular vessel for the unfair trade practices of a nation.

Unfortunately Mr. Chairman, this legislation, even if successful in eliminating trade barriers, will not lead to the rapid expansion of the U.S.-flag fleet. The SIU thus considers it only a first step, and believes that many more steps must be taken. The next step, and one which must be taken soon, is for the government to provide substantial volumes of commercial cargo to U.S.-flag carriers.

TITLE II—AMENDMENTS TO THE MERCHANT MARINE ACT OF 1936

Mr. Chairman, I want to commend you and the other members of the Subcommittee for your willingness to tackle early on in the Subcommittee's legislative schedule a very complex, but extremely important issue, the need for operating subsidy reform. The urgency and severity of this problem is more obvious today then last summer when the Subcommittee previously considered subsidy reform legislation. During my testimony last July, I stated that "one need only look to the corporate balance sheets of the companies . . . to realize the urgency and severity of the situation," and ". . . that unless substitute programs to those embodied in the 1936 and 1970 Merchant Marine Acts are adopted, our American Merchant Marine will all but disappear." Unfortunately, shortly after that hearing the nation's largest liner operator, U.S. Lines, was forced to declare bankruptcy. Since then, other operators have been scrambling to fill the void created by the disruption in U.S. Lines' service. The Maritime Administration has been approached to address maritime policy on a piecemeal basis, resulting in a few benefits to some and very little long-term rewards to the shipping industry and the nation as a whole. Unless we are able to reach a consensus this year and forge ahead with a revised maritime promotional policy, there will not be an American-flag liner industry sailing the high seas in the year 2000.

The events of the last year coupled with the long-standing tendency to let our liner policy languish has resulted in the devestating condition of our industry today. Since the early 1970's, American liner companies have been reduced by one-half. Beginning with this decade, we have witnessed the authorization of no new subsidy contracts. For those already receiving subsidy, we have permitted the "rules to be changed in the middle of the game" for selected operators with the expectation of positive results for the fleet. Such proposals have been flawed and it appears that the opposite result has occurred. Thus we have arrived at out present state. And the reason is obvious—the lack of a consistent, continuing, fair and effective national maritime policy.

I am encouraged by the Subcommittee's recognition of this problem through the inlcusion of Title II in S. 1183, calling for the reactivation of the operating-differential subsidy program, thereby permitting unsubsidized operators to apply for assistance and relaxing the regulatory environment in which they must compete and still be eligible for subsidy. While we are pleased with this proposal and support a reinstatement of the program, we feel that it would be imprudent to throw caution to the wind in the press to enact a subsidy reform package and feel careful consideration should be given to what items are included in the reform package.

One of the key elements of this legislation, as in previously debated subsidy reform meansures, is the extension of subsidy to foreign-built vessels. While we are reluctant to endorse the payment of operating subsidy for foreign-built vessels, the absence of a government-assisted vessel construction program provides no other choice. The realities of world shipping economics require this departure from long-established maritime policy. However, such a departure must be an exception and not the rule for our nation's maritime policy as the United States must not allow its shipbuilding mobilization base to continue to die a slow death. I know the Subcommittee members are fully cognizant of the importance of a strong shipbuilding base to our national security and I pledge the SIU's continued support to assist you in your efforts to rebuild the shipbuilding industry.

While renewal of the operating-subsidy program will encourage the revitalization of the U.S. fleet, it continued maintenance will only be realized if the U.S. fleet can be competitive with the fleets or our trading partners. Streamlining the regulatory environment will go a long way toward making the U.S. fleet more competitive. Therefore, we endorse eliminating the concept of strictly regulated essential trade routes giving U.S. operators a more equal footing with our foreign competitors who have enjoyed opportunities to compete without the restraints imposed by the trade routes. However, in doing so, we must not jeopardize the financial and economic well being of the smaller liner operators who do not have the extensive fleets and infrastructure of the large operators. If the large companies are permitted to operate with no controls, the smaller companies could be irreparably harmed. Consequently, it is imperative that a protective barrier is implemented providing balance to the needs of the small and large liner operators.

In easing the regulations imposed on subsidized operators, we must be cautious about the potential infringement on the domestic trades resulting from a relaxed regulatory environment. Therefore, we would support inclusion of a grandfather clause which permits the continued operation of existing mixed services by liner operators which are presently subsidized or who may in the future become subsidized as a result of the enactment of this legislation. However, the SIU is opposed to any future mixed services that would be in addition to or beyond that offered by any carrier today.

In addition to a freer regulatory environment, another means for U.S. operators to be more competitive with its foreign counterparts, to which we made reference in our testimomy on Title I, is through accessibility to cargo. In conjunction with our endorsement of foreign-built vessels being eligible for subsidy, we believe that such vessels whould be immediately eligible to carry perference cargoes. Only if all operators are insured access to both commercial and government cargoes will the U.S. fleet rise from its present doldrums.

Mr. Chairman, the recent bombing of our naval vessel in the Persian Gulf, the expressed intention of the Kuwaiti government to reflag part of its tanker fleet under U.S. laws in order to shelter it under the protective arm of the U.S. Navy and the ceremonies in which we are participating this week honoring the merchant seamen who gave their lives for our country serve as a reminder that the United States must maintain a commercial fleet capable of meeting our defense needs as well as our economic needs. Sadly, we do not have such a fleet today. Revitalizing the operating subsidy program is an initial step towards rejuvenating the fleet. To reinstitute the program correctly, we must insure that all of the participants are treated on an equal basis, following a uniform set of rules, with no one player receiving favored treatment over another.

As everyone involved in American shipping is aware, the decline of the U.S.-flag fleet has been addressed repeatedly by the Administration. In its January 1987 report entitled, "National Security Strategy of the United States," the Administration, in recognizing that the execution of U.S. strategy depends on the ability to reinforce and resupply forward deployed forces, acknowledged that sealift will be responsible for carrying out this goal. However, in assessing America's ability, the report stated:

". . . the continuing decline of the U.S. merchant marine and U.S.-flag commercial shipping assets is a matter of concern. This problem is compounded by the decline of the U.S.-flag fleet which results in a reduction of the seagoing workforce to man all our U.S.-flag vessels as well as ships of the Ready Reserve Force, the National Defense Reserve Fleet and any effective U.S. controlled ships which might need recrewing. The lack of merchant mariners in the near term could impede our ability adequately to project and sustain forces by strategic sealift."

The facts reached in this report are not new and the time has come to back up through an effective policy the words which often have been used in acknowledging the dual role of a strong merchant fleet to our nation and its current inability to satisfactorily carry out those responsibilities.

Therefore, in conclusion, the Seafarers International Union respectfully requests the Subcommittee to act quickly to solve the problems facing U.S.-flag carriers. With each year, America's share in the transportation of our waterborne commerce is continuing to decline and will result eventually in a number of U.S.-flag international shipping companies being forced into bankruptcy. The Seafarers International Union fears that without an immediate solution the U.S.-flag fleet will not be operating in international commerce in the next decade.

Senator BREAUX. Thank you very much, Mr. Drozak. Before we take Mr. Landgrebe, we have the second bell on a recorded vote. And I think we will recess for just a moment, catch the vote, and come right back.

[Recess.]

Senator BREAUX. The subcommittee will please come back to order.

Before the vote we were going to take Mr. Landgrebe. Mr. Landgrebe, we are pleased to have your appearance.

Mr. LANDGREBE. Thank you, Mr. Chairman. I am here on behalf of my president, Mr. C.E. DeFries, National Marine Engineers' Beneficial Association.

We have introduced our testimony and I will read it for the Chairman and the subcommittee. I would like to address both titles of your bill, since a previous commitment prevented my appearance yesterday.

The National Marine Engineers' Beneficial Association endorses Title I of S. 1183. It establishes a simple test for determining if U.S. flag carriers are being discriminated against by foreign competitors. It also gives the FMC a clear policy directive and grants all the necessary and appropriate powers of enforcement.

On Title II you have crafted a good starting point for the industry to get on with its most important task, keeping a fair and meaningful government assistance program in place. The NMEBA believes that the ODS system needs to be revised and updated.

However, we are very concerned that the final product could be inferior to the present system. The maritime industry and maritime labor in particular must be assured that any new ODS system is indeed better than and not merely different from the present subsidy program.

Sections 202 and 203 in Title II are necessary to end the shameful policy of no new ODS contracts. They recognize that subsidy is a necessary prerequisite to meet foreign competition.

The National Marine Engineers' Beneficial Association does not want to see fly-by-night liner companies get ODS contracts. However, we also cannot afford to have any more liner companies vanish for lack of sufficient Federal assistance.

The National Marine Engineers' Beneficial Association endorses section 204, granting unlimited, unsubsidized operations of U.S. flag vessels for subsidized operators. But it falls short in preventing damage to the small companies.

We also endorse section 205 granting subsidy eligibility to foreign built liners and its companion section 206 granting immediate eligibility for such vessels to carry preference cargoes, although the bill should specify liner preference cargoes.

Our endorsement of sections 205 and 206 are conditional, however. We believe that the privilege bestowed should be limited only to newly ordered vessels and those foreign built or rebuilt vessels actually owned or chartered by those companies as of the date of introduction of this bill.

There are several additional matters that should be addressed. The National Marine Engineers' Beneficial Association interprets section 201 as permitting subsidized liner services on or off essential trade routes.

This could be part of a structure granting larger companies flexibility while protecting the smaller ones. However, some additional clarification may be necessary for it to work.

Section 605(c) helps safeguard the ODS program abuses and misapplication of benefits. However, most analysts have concluded that the present 605(c) process is an administrative nightmare. We believe this bill could be the vehicle to perform radical reforms to that process.

The National Marine Engineers' Beneficial Association is pleased to see that S. 1183 does not attempt to legislate with regard to manning, wages, benefits, or working conditions.

Those subjects have been traditionally worked out between employers and employees, not the government. That is the American system and it is working well.

We are also exceptionally pleased to see that the subsidy contracts this bill would set in place are for up to 20 years and are available to both currently subsidized and unsubsidized companies. This is the only way to ensure maintenance and renewal of the fleet for the long run.

Finally, the National Marine Engineers' Beneficial Association would like to reiterate its position on two points crucial to any rewrite of ODS.

We should not subsidize over-aged vessels, and we are firmly opposed to foreign flag vessels with foreign crews working on an integrated basis with the subsidized fleet.

In addition there are a host of important issues not raised in the legislation, such as domestic operations by subsidized operators, funding for the ODS program, the ownership of foreign vessels and assets by subsidized companies, et cetera.

I expect these issues will be addressed as the bill evolves over time. When proposals are brought forward for comment, we will be pleased to share our views with the subcommittee. Thank you, Mr. Chairman and members of the subcommittee.

Senator **Breaux**. Thank you gentlemen both for your presentation and for being with us and for staying with us through the recess.

Let me ask a question about the Ready Reserve Fleet. The purpose of it of course is to have a fleet that is available to carry cargo in times of a national emergency.

There is no provision in place that is functioning right now that would provide the crews and the manning for the Ready Reserve Fleet in time of an emergency. How serious is that as a defect for having that Ready Reserve Fleet ready to go in time of an emergency?

How long does it take to train a group? Where do the men and women come from that the military and MARAD would be looking to in order to man that fleet in the time of a national emergency?

Can it work the way they have it planned?

Mr. **Landgrebe**. No. And as to how long it would take, as you probably know and we have brought out in previous testimony before other committees, our World War II contingent of highly trained people has drifted away.

We have attempted through our own programs to train people so that we will have this manpower. However, there are no billets to put these people to get this experience.

And you can give them all the schooling you want, but it still takes both legislatively and in a realistic way they still have to have that experience out there to make these steps up through the grades and be the people that you need in time of emergency.

Senator **Breaux**. It seems to me that the industry and your manpower to run the ships and man the crews, et cetera, that as we lose the ships you lose the crews.

I mean, they just do not sit around and wait for a job to come on, if there is no job on the horizon. It is kind of like the oil and gas industry where we have lost technicians and engineers and people who are geologists and petroleum engineers.

If the industry comes back, they are not going to be there. They are going to go off and do something else. Is that the same experience that you are experiencing in your respective unions?

Mr. **Landgrebe**. Absolutely.

Mr. **Drozak**. In this day and time, it takes a lot of education and training to meet the high technology changes of the last several years. So when a seaman leaves the industry you have lost a wealth of experience.

Although you have lost some 12,000, or maybe 14,000 seamen in the last 8 years. Those guys are not going to come back. We had a similar problem in the Vietnam War trying to recruit guys who had left the industry after the Korean War.

The reason they leave is simple: they are not going to come back for part time work. There is no guarantee of long term employment out there for them. So why should they leave an electrical shop or any job where they have full employment why would they want to go out and assist to breaking out a fleet of reserve ships, when they know it is only going to be for a short time and they are going to be back on the beach.

The task of recruiting people to man those reserve ships would be an impossibility. I could say to you today that if we were ordered to break out the 60 to 70 ships that are in the Ready Reserve fleet, we would probably be able to man only 30 of them fully.

Now that would be the most. Now we could probably scrap up the rest of them maybe in three months. And in that period of time, if there is a conflict that lasts over that, we are in trouble.

Senator BREAUX. Do you agree with that?

Mr. LANDGREBE. I certainly do.

Senator BREAUX. One of the key points that needs to be recognized, when we talk about the costs of any kind of an ODS reform package, and that is the administration says, well, we have the Ready Reserve Fleet. It will be there.

I guess the point that you are making is that while the ships may be there in questionable operating condition as far as being able to go to sea tomorrow, and the manpower to make them function properly, is simply not there.

Mr. DROZAK. Mr. Chairman, when we were involved in the Vietnam War, and I have to go back to this, the ships that were in the laid-up fleet were Victory ships and C3s and C4s, which required some 40 to 42 men to operate.

While we were successful in maintaining the flow of military cargo that was necessary for the Vietnam conflict, we had to move people from one ship to another ship. In other words we would take a ship laying in port which wasn't ready to set sail for a period and we could pull off that ship any needed replacements except what it took to maintain the operation of the ship while she is laying in idle status. These seamen would then move to other ships.

We do not have that flexibility any longer because with the high technology that has been introduced, you are down to 21 people on board the ship. Actually it takes more than 21 people to run a ship. It must be pointed out that these crews work 12 to 14 hours a day, seven days a week, just to maintain that ship.

So there is no availability of trained manpower on board anymore to transfer between vessels. Nor is the availability of qualified people ashore guaranteed. The active manpower pool runs on the basis of one guy on the ship and one crew member ashore.

In MARAD's estimate, they are projecting that we can take those guys who are ashore and not at work. Well, many of these seamen are coming off of six months and you are going to turn around and tell him to take a ship out to the Persian Gulf. I think you got a problem in convincing him to do it.

And they are relying on that part of the manpower when they talk about, we got these excess billets ashore. The guy is on vacation, he spent his time out there. He is not going to be easy to move.

Senator BREAUX. Senator Stevens, do you have any questions?

Senator STEVENS. No. I think we have been through this before, and I do not have any questions.

I am glad to see you both back. We will try again, that is all I can tell you.

Mr. DROZAK. I have one last comment, Mr. Chairman.

I would hope that this committee would take what has been presented in the hearings yesterday and today, and what has been presented in the last several years, and draft a bill and let us see if it will work.

We are not going to satisfy everybody, Mr. Chairman. But you have an obligation and I think everyone else has one too, to do something about the problems facing the maritime industry. You have my full support.

Senator BREAUX. We appreciate your being with us today. I think, and I say to my colleague from Alaska, there is a great deal of expertise in defense and appropriations, and what I think we are finding is the administration and other administrations for that matter have suggested that, well, we have a sick merchant marine. But we are going to make up for it by a Ready Reserve Fleet.

And they want to spend the money over there, when it would be just as easy and probably in the long term much more beneficial to spend it with the merchant marine and provide current, active seamen who are ready to go to sea and are going to sea every day.

But that would solve that same problem and probably do it at less of a cost. Hopefully that is what we are trying to do.

Gentlemen, we thank you very much.

Mr. LANDGREBE. You have our support in that effort.

Senator BREAUX. We have our next panel, Mr. John Stocker, president of the Shipbuilders Council, Mr. George Miller, Shippers for Competitive Ocean Transportation, Mr. Dave Haugen, vice president of Lynden, Inc., from Anchorage, and Mr. Mickey Arison. Is he testifying? Allen Howe is going to present testimony on behalf of Carnival Cruise Lines.

Our former colleague from the House, from the Merchant Marine Committee. We are pleased to have you.

STATEMENTS OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA, ACCOMPANIED BY H. GEORGE MILLER, EXECUTIVE DIRECTOR, SHIPPERS FOR COMPETITIVE OCEAN TRANSPORTATION; DAVE HAUGEN, LYNDEN, INC., ANCHORAGE, ALASKA; AND ALLEN HOWE, CONSULTANT TO CARNIVAL CRUISE LINES

Mr. STOCKER. Mr. Chairman, thank you very much for the opportunity to appear before you today.

My name is John J. Stocker, I am President of the Shipbuilders Council. We would like to comment on Title I of S. 1183, and since you do have these recorded votes coming up let me be very, very brief, because this is of interest to us, but the language that is currently in the bill does not have a direct applicability to the shipbuilding industry.

Let me add that philosophically we are in absolute agreement with you. In my comments to you yesterday when we discussed Title II, I mentioned that we thought one option that was open to this committee was to look at the possibility of a new promotional package.

The reverse to establishing a new promotional package is to strengthen the hand of the Special Trade Representative and our trade negotiators in the State Department in terms of dealing with foreign countries to attempt to get those foreign countries to reduce their levels of subsidy to their own shipyards.

We would encourage you and the work that you are doing and the work the subcommittee is doing to consider the possibility of perhaps not in this bill but in terms of talking with your colleagues on the Finance Committee of attempting to get some of the concerns that we have on to the trade bill, that would tend to strengthen the hand of the Special Trade Representative in dealing with issues like shipbuilding subsidies.

The bottom line is that we are not being subsidized. We are competing with people who are. And, if it is impossible to establish a promotional program for budgetary reasons, we would request that negotiations be entered into so that foreign subsidies could be reduced.

And we would look for your support in that area. That briefly summarizes my written statement, which you have. Thank you very much.

[The statement follows:]

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA

Mr. Chairman, Members of the Subcommittee. I am John J. Stocker, President, Shipbuilders Council of America—the national trade association representing America's shipbuilders, ship repairers, and manufacturers of marine equipment. A membership list is attached. We represent 94 percent of the total shipbuilding and ship repair workers in the United States.

I appreciate the opportunity to present the views of the Shipbuilders Council on Title I of S. 1183, legislation to amend the Shipping Act of 1984. The measure is designed to provide the Federal Maritime Commission with greater flexibility to deal with laws and practices of foreign governments and the practices of foreign carriers relating to "maritime or maritime-related services" which result in conditions for U.S. carriers that do not exist for foreign carriers under the laws of this nation or as a result of acts of the United States or other persons providing "maritime or maritime-related services" in this country.

If the FMC finds that such conditions exist, it is directed to take one or more steps against foreign carriers who are a contributing cause to or whose country is a contributing cause to such conditions. These offsetting steps include: (1) limiting the foreign carrier's sailings to and from U.S. ports or the amount of cargo carried; (2) suspending, in whole or in part, any or all of the carrier's tariffs filed with the Commission for carriage to or from U.S. ports; and (3) suspending, in whole or in part, the carrier's right to operate under any agreement filed with the Commission.

Title I of S. 1183 is premised on the principal of reciprocity in ocean shipping services. Or, stated differently, the "golden rule," namely, the United States will do unto foreign carriers as foreign countries will do unto our carriers. Notwithstanding the fact that the language does not affect or benefit our members, the Shipbuilders Council would not object to Title I.

Procedurally, we have two problems with respect to Title I of the bill. First, the Council questions whether the FMC has the necessary expertise to examine international shipbuilding issues. Second, since vessel construction subsidies are explicitly mentioned in the Trade Act of 1974, it appears that statute is the more appropriate vehicle to address our trade concerns. However, we would like to take the opportunity of this hearing to bring to the attention of the Subcommittee what is occurring in the international shipbuilding arena.

The shipbuilding industry in the United States has been abandoned by the United States Government insofar as the international market. Early on in this Administration, the free trade ideologues that dominate the Executive Branch made a determination that subsidies were bad. Subsequently, when they were very successful in eliminating funds for the Construction-differential Subsidy program, they pushed the industry into the international market to compete not against other shipbuilding firms, but against foreign governments. As a result, for the past six years, this industry, without any assistance programs, has faced a market dominated by the direct and indirect support that foreign governments routinely give to their industries.

Without government support of some kind, the shipbuilding industry cannot compete on a price basis anywhere in the world. Yet, this is the same industry that in the past six years has returned $6.8 billion to the U.S. treasury as naval contract award savings. These savings were generated because we now approach the process of ship construction in a more systematic way using the most advanced construction techniques. The competitive process in Navy shipbuilding has allowed the industry to incorporate extensive modular construction, rigorous internal cost control, more subcontractor competition, and constraints on the cost of labor. In short, the industry believes that today it is more competitive in terms of production costs than it has ever been in the past. Coupled with the decline in the value of the dollar against other major foreign currencies, the shipbuilding industry would like to compete in the international arena when circumstances will allow for fair and equitable competition.

Why is the industry concerned about an international arena where UNCTAD has already declared an over capacity situation of 40 percent. First, we recognize that the halcyon days of the naval fleet buildup are nearing its end. We hope that the Congress, as it grapples with making a budget for Fiscal Year 1988, will recognize that maintenance of the 600-ship Navy requires annual authorizations and appropriations of approximately 20 ships per year with funding of about $11 billion per year. In Fiscal Year 1988, the Department of the Navy has requested funding for the construction of 16 ships and the conversion of four others. We urge Congressional support of this request. At this time, the Navy is our primary customer with nearly 90 percent of the industry's work force dedicated to Navy projects. But it is certainly true that the days of substantial growth in the Navy shipbuilding and conversion budget are over. Witness the action of the Senate Armed Services Committee which reduced the SCN budget request from $11.065 billion to $10.1 billion.

Second, despite broad-based reductions in the number of new ships ordered, we believe that the international market will always support a level of commercial ship replacement, particularly as trade intensifies on a global basis. Obviously, short-term dislocators may occur as business cycles affect the global economy. But the bottom line is that the world's products move on ships and replacement of these ships is likely to continue. For example, on June 30, 1986, there were worldwide orders in hand aggregating 23,627,686 tons. While this should not be interpreted as a welcome sign of revitalization of the world shipbuilding market, it does compare favorably to earlier periods, particularly in 1978–1979 where quarterly trends indicated about 25 million tons on order. Moreover, we note that the Overseas Shipholding Group, Inc. recently placed orders for the construction in foreign yards of a VLCC and four 40,000 dwt product carriers.

Currently, our industry is completing construction of three commercial ships. Although these ships are included in the statistics for the international market, all three are for the Jones Act trade. We have not had an order for a ship destined for the foreign trade since 1981. So, our ability to compete against foreign governments has failed. This is so despite our capability to build the finest warships in the world at competitive prices. Those ideologues who criticized us for being non-competitive continue to hide behind their theories in the face of empirical evidence that their academic philosophies have failed in the real world.

We must turn to whatever commercial market exists in order to stabilize this industry to meet national security requirements and the long-term commitment by this government to maintain a ship construction industry. It is clear that we cannot, in the face of unfair trade practices, compete for whatever contracts may exist in future markets. The shipowner is not to blame for looking elsewhere. As a consumer and, while production costs may interest him, it is for the most part price that will deliver him to a shipyard as a customer. For example, recently American President Lines, Ltd. ordered five ships from two West German shipyards, HDW and Bremer Vulkan. This order was won by the German yards with heavy financial support from both the federal government in Bonn and the State government in Schleswig-Holstein. The explanation for why the Germans have offered this level of subsidy support is their concern that German shipyards in particular, and European shipyards in general, have suffered from severe employment reductions.

According to press reports, the federal government granted a subsidy of Dm 112.5 million to increase HDW's capital with another contribution of Dm 37.5 million in state aid. An outright cash payment of Dm 125 million is being made to Bremer Vulkan by the Bonn government. In addition, the Bundestag has earmarked Dm 125 million in the defense budget to subsidize the construction of these ships. Thus, the two yards will have received a total of Dm 400 million in direct subsidies. At current exchange rates, those subsidies amount to $215.63 million. While we are uncertain as to the precise cost of these ships, our best estimate is roughly $80 per ship. Thus, the subsidy level equates to 54 percent.

This single example of government intervention is not meant to embarrass APL but rather to point out the difficulties the shipbuilding industry faces in meeting unfair trade practices. It might point out that compared to this single example of government aid in the amount of $215.63 million, the United States Government has not provided one dime in CDS since 1981. And yet, we are expected to price our ships in a manner that will win contracts from the West Germans, the European Community, the Japanese, the South Koreans, or any other interventionist society. It should be noted that the EC has recently concluded a subsidy agreement which pegs the level of assistance at 28 percent. Is it any wonder that commercial shipbuilding in the United States is at an all-time low?

There is a way of countering these predatory pricing practices of foreign governments. The first step is to recognize there is not a free international market. In a recent letter to me, Maritime Administration John Gaughan has admitted that foreign subsidies, direct and indirect, exist and that his agency will commence to document those practices. Understanding the constraints that Mr. Gaughan must operate in, we applaud his action and hope for a speedy report.

Second, we would ask the Congress to tighten up the procedures under which the United States Government can find unfair trade practices and to take punitive remedies, if required. The Trade Act of 1974 includes vessel construction subsidies provided by a foreign government or instrumentality within its scope. However, current law allows the Special Trade Representative not to take action so that foreign governments know that subsidy practices will go unpunished. Yet, the U.S. domestic market, the largest in the world, remains open to foreign penetration leading to the direct loss of American jobs in the manufacturing industries.

As a result, we would ask that the Congress mandate a tightening of procedures similar to that outlined in this bill, reductions in the Executive Branch authority to accept non-action as a legitimate decision, and to establish a Shipbuilding Intervention Fund as the source of punitive remedies, if needed. Statutory language to implement such changes is attached to my statement.

A word about the Shipbuilding Intervention Fund is in order. We see such a fund as a threat to foreign governments that will hopefuly force those governments to the negotiating table. Is there a potential that such a fund could create the basis for a subsidy war? We would hope not. But we are fairly convinced that "jawboning" will not work unless there is a realization that the United States Government is serious about attaining truly open markets.

All we desire is the opportunity to compete. We are currently denied that opportunity. In the APL case, no American shipyard was even asked to quote. We believe we are more competitive. The statutory language we propose does nothing more than create a level playing field. If we lost in genuine fair competiton, so be it.

Our experience on Navy contracts, our belief that construction techniques have improved our productivity, our understanding that a weaker dollar should encourage exports gives us faith that we can compete at least on a par with the Europeans and, perhaps the Japanese, for certain classes of commercial ships. We may not be successful against the South Koreans or the People's Republic of China but give us the chance to, at least, test our capabilities. Certainly at the technologically sophisticated end of the spectrum in an open market, we should be successful.

This concludes my statement. I will attempt to answer any questions that you may have.

Senator **Breaux**. Mr. Miller?

Mr. **Miller**. I appreciate this opportunity to present shippers' comments on Title I.

You have my written comments and in the interest of time I will summarize our major concerns.

SCOT supports the principle of commercial freedom of the seas, the right of each shipper to select carriers based on service and rate. This principle results in efficient movement of U.S. cargo.

It follows that the U.S. shippers want U.S. flag carriers to be free to compete for all of our cargo. Where the trading partners impose unfair restrictions, SCOT will support the objective of Title I to remove those restrictions.

We commend the Senate merchant marine staff for drafting a bill that deals with the identified problems of the U.S. liners in intermodal trade.

The scope of your proposed legislation does not cover bulk movement on non-liner vessels. We strongly believe that bulk should not be covered. It does not move under tariff rates, carriers do not take intermodal responsibility for bulk movements, and much bulk moves on long term contracts often in vessels specifically built for a specific service.

We note with particular appreciation Senator Breaux's comment that the present provisions of the bill are not set in concrete. In some areas we feel implementation of the bill could be detrimental to U.S. commerce.

The primary counter-measure in this bill is to cancel tariffs of carriers of the offending trading partner. This reduces service available to U.S. shippers. It also may result in retaliation by the trading partner, cancelling tariffs of U.S. flag carriers. This further reduces service. Obviously this can hurt U.S. export sales and service on imports.

Our first recommendation is to direct the FMC, in selecting counter-measures to correct the unfair condition for U.S. carriers, to consider the impact of the action on U.S. commerce.

Before a tariff is cancelled, they should be certain alternative economical service is available. Contract commitments should be honored. The U.S. shippers are increasingly dependent on service contracts to expand export sales. Commitments on service and price are based on those contracts.

The second recommendation is to make certain the resolution of these problems does not lead to restriction of competition in the U.S. trades. While the U.S. policy does not condone the reservation of commercial cargo, it must be recognized that many of our trading partners rely on cargo reservation to protect their national lines.

We should make it clear that we will not accept cargo reservation schemes as a means of resolving the problem of unfair restriction to U.S. carriers and take that chip off of the bargaining table.

Our third point is to recommend solving this problem by an amendment of section 19 and that has been well covered by others.

We would like to note however that shippers have been generally satisfied with the ability of the FMC to protect shippers interests under section 19, and we as shippers are not seeking added protection.

The FMC has aggressively pursued several investigations. They have secured the information needed to reach a decision. And they have found conditions unfavorable to shipping.

Our fourth point, as noted in the written testimony, is that we feel the trigger mechanism in Title I is ambiguous. And that too has been covered by others.

Finally we recommend that the present provision on confidentiality of information be retained and strengthened. Persons required to give sensitive commercial information should be able to request the commission to keep it confidential.

I would be glad to answer any questions. SCOT welcomes the opportunity to work with you and your staff on these objectives. As I mentioned, I paraphrased the testimony. I hope that I did not create too many problems.

[The statement and questions and answers follow:]

STATEMENT OF THE SHIPPERS FOR COMPETITIVE OCEAN TRANSPORTATION

Good afternoon. My name is H. George Miller, Executive Director of Shippers for Competitive Ocean Transportation (SCOT).

SCOT represents a broad cross section of U.S. importers and exporters as well as a several major industry organizations. Its membership accounts for over half of U.S. international movements on ocean liners.

SCOT sincerely appreciates this opportunity to present its views on the Foreign Shipping Practices Act of 1987. We believe that this legislation represents a good blueprint for reconciling the U.S.'s traditional dedication to "freedom of the seas," with the need to remedy those operational restrictions of our trading partners which put U.S.-flag liner carriers at a competitive disadvantage in seeking to participate in U.S. ocean-borne commerce. SCOT fully supports this objective.

SCOT commends this committee's thoughtful approach to creating a level playing field for U.S.-flag carriers. However, we do see problems with a few points, and respectfully request that corrective action be taken.

(1) U.S. shippers believe that U.S. commercial needs are best served when all carriers are free to carry cargo. This permits the person paying the freight to select a carrier based on service, rates and other factors that permit the efficient movement of freight. It must be recognized that many of our trading partners do not share our commitment to open ocean trades. Thse trading partners may suggest reserving an equal share of cargo to U.S.-flag carriers as a way to resolve a dispute under this legislation. Removing more cargo from access to the most efficient carriers is exactly what should not be allowed. This "easy way out" would deprive U.S. shippers of competitive options and deprive U.S. carriers of the right to compete for the cargo reserved to other carriers. SCOT strongly recommends adding a provision to this bill which prevents the reservation of commercial cargo in any intergovernmental effort to resolve conditions unfair to U.S. carriers. This would remove that solution from the bargaining table and would force negotiators to find other solutions consistent with U.S. maritime policy.

(2) Since actions to correct conditions unfavorable for U.S. liner carriers will have important consequences for their customers and for U.S. trade, the commission should be directed to consider the effect on U.S. shippers and U.S. commerce when the determining what remedial action is appropriate. Before service is canceled, the commission should consider whether alternate economical service is available, and whether long term transportation contracts can be honored. U.S. commerce is dependent on these contracts to meet delivery schedules committed in sales contracts and to assure timely delivery of essential imports.

(3) Section 19 of the 1920 Merchant Marine Act already has provisions to protect both shippers and carriers when conditions unfavorable to U.S. shipping are found to exist. These provisions partially address carrier problems in this area. Rather than create a new, parallel and possibly overlapping set of regulations, SCOT believes the subcommittee should consider amending section 19 instead of adding a section to the Shipping Act of 1984. Moreover, SCOT believes that S. 1183 runs the risk of opening up the Shipping Act of 1984 to other amendments. Congress has studiously tried to avoid this prior to the scheduled 1989 review of the act.

(4) The basis of the FMC action under section 23(e) seems to beg the question. It appears to imply if conditions in the trading partner are "different" than conditions in the United States corrective action will be triggered. Presumably it would require our trading partners to have conditions governing, for example their inland segment of intermodal transportation, that are identical to those in the United States. This approach fails to take into account the diverse regulatory systems governing transportation services, and could well invite retaliation by our trading partners. Would we tolerate a foreign country telling the United States that our regulations governing intermodal movements by rail or truck in the United States must be the same as their regulations? I think not.

SCOT would prefer a standard for corrective action similar to section 19's standard of "general or special conditions unfavorable to shipping." While SCOT believes it is not necessary to require a trading partner to control intermodal operations the same way as the United States, it is fair to require that our carriers and shippers are treated in a manner that is not unfavorable to shipping. Again, this supports our request to amend section 19 of the 1920 act.

(5) SCOT supports the subcommittee's decision to apply this legislation only to the liner, i.e. the ocean common carrier trades. We oppose the inclusion of bulk movements. There are no tariffs for most bulk movements. Most bulk moves under long term contracts, often on specialized vessels specifically designed for the trade. Clearly any attempt to apply the legislation to bulk could greatly disrupt U.S. foreign commerce.

(6) Section 23. Subsection (d) allows the commission to keep information received in its inquiries confidential. This point is important to SCOT since, under broad investigative powers, the commission may secure information from a carrier or from a shipper that is commercially sensitive, and cause serious problems if disclosed to competitors. The provision should be modified to require the commission, upon request from a party providing information under the act, to hold that information confidential.

I have attempted to highlight the basic principles upon which SCOT believes this legislation should be based:

Create a fair playing field for all carriers;
Bar cargo reservation as a means of resolving dispute;
Consider shipper and U.S. trade interests in taking remedial action;
Amend section 19 instead of the Shipping Act of 1984;
Take action only against foreign practices that are unfavorable to shipping;
Continue to limit the bill to liner activity; and
Strengthen the confidentiality protection.

SCOT welcomes the opportunity to work with you and your staff in accomplishing these objectives.

SCOT,
Washington, DC, May 25, 1987.

Mr. LLOYD L. BEASLEY, Jr.,
Printing Clerk, Senate Committee on Commerce, Science and Transportation, Washington, DC.

DEAR MR. BEASLEY: Attached are the questions and the corrected transcript of the oral presentation for the Hearing on S–1183, Title I May 21, 1987, Hearing Reference No (29) for SCOT.

The first eight questions related to restrictions on intermodal operations of U.S. flag carriers in Korea and Taiwan and each asked "Does this affect U.S. shippers." The general answer is:

"SCOT has received no reports from member companies of serious problems in securing service on intermodal movement of exports to Korea or Taiwan or imports from those countries when movements were made on U.S. flag carriers. It appears that U.S. flag carriers have found ways to prevent the problems from impairing service.

"To the extent the restrictions increase U.S. carriers cost or restrict their ability to effectively solicit backhaul cargo for their containers they could adversely affect the carriers ability to offer service at competitive rates."

For simplicity I have reported "No reported affect on service but it may adversely affect the cost for the U.S. flag carrier."

The answer to the final question on China is attached to the copy of the question.

Yours truly,

H. GEORGE MILLER,
Executive Director, SCOT.

Enclosure.

Question. Would you please comment on the following article which appeared in the China Business Review/January–February 1987.

The value of two-way trade between the United States and China was $8 billion in 1985. As in the past, this tonnage crossed the Pacific primarily by sea. But while goods traded between the United States and China sail both ways in roughly equal amounts, shipping conditions are far less equitable.

China dominates the U.S.-China sea trade through two State-run transport companies, which handle almost all of China's outbound trade. At the same time, those two companies also participate relatively freely in the U.S. market, competing one-on-one with their American and other foreign counterparts.

American shipping lines on the other hand, no longer call directly on China's ports, in part because of Chinese cargo allotment practices that U.S. shipping representatives say favor Chinese ships, port congestion, and Chinese port fees that are reputed to be among the highest in the world. Other U.S. attempts to enter the Chinese market have been prohibited outright.

U.S. freight forwarders and shipping lines cannot directly solicit business from Chinese importers and exporters. And U.S. shipping lines are essentially excluded from operating feeder services between China and Hong Kong because China claims this is a domestic route subject to sabotage.

Does this affect U.S. shippers?

Answer. The U.S./China trade for 1985 consisted of $3.8 billion in exports (1.8 percent of the total), and 4.2 billion in imports (1.2 percent of the total). We concur that most of the volume moves on vessels arranged by the Chinese. Of the exports over 80 percent of the maritime volume consisted of product groups "O" Food products mostly grain (800M tons); Group "2" Crude materials, inedible, except fuel—mostly crude forest products (6,226M tons); and Group "5" Chemicals—mostly fertilizers (1,500M tons). This leaves less than 450M tons for liner movement.

We believe that almost all of the above three groups moved in bulk, or in semibulk in large volume shipments on tramp or chartered vessels.

There is not a U.S. flag bulk fleet capable of moving cargo at competitive rates. To compete for these important bulk and semibulk markets it is essential that U.S. exporters economically meet the transportation requirements of the customer. In the case of China this is often a requirement to sell fob the U.S. port of export with the option of the Chinese to move in their own flag vessels.

Many centrally planned economies and many LDC's lack the ability to compete in world markets and to develop sufficient hard currency to purchase the products they need from free economies. By purchasing product fob origin port they conserve hard currency and, in effect, are able to buy more U.S. product. As a practical matter it probably serves U.S. commercial interests to permit China to pick bulk products up fob the U.S. port. With regard to liner cargo several SCOT members are active in the trade and they report that China does tend to pick up most liner cargo fob U.S. port for the same reason as they control the bulk freight.

Where possible they route the cargo on Chinese vessels which publish schedules from several U.S. ports on all three coasts to Chinese ports direct. It is rather common for the Chinese liner vessels to be overbooked and for a port call to be cancelled when the vessel fills up at an earlier port of call. China regularly charters in space on tramp vessels to pick up this extra cargo or they may delay it to the next scheduled vessel. Under todays weak market the charter rates are low and we understand the Chinese may try to find a vesel that will accept payment in a soft currency.

U.S. exporters do have problems in scheduling production and dock delivery of cargo for the Chinese because of the unreliable schedules. Occasionally the Chinese purchase contract will make the U.S. exporter liable for dock demurrage on cargo awaiting the Chinese vessel. We understand the Port of Houston designated a "China berth" and published tarrifs that allowed extra time for the Chinese vessels.

On occasions when delays exceed 30 to 60 days the U.S. shipper will request and receive permission to ship the cargo the next available vessel. A few chemical shippers reported the Chinese do give them the right to route the shipments on vessels of any flag.

While the delays do tie up funds in inventory and are a nuisance the delays do not affect the ultimate payment for the shipments. Should the U.S. switch to sale C&F the Chinese port the shipper would be responsible for delays, even those at Chinese ports, and this could create serious problems if letter of credit expired. At the present China has very limited facilities to handle containerized cargo. The concept in S. 1183 of controlling dock operations or inland transport in a controlled economy like China is probably not possible.

It is our perception the centrally controlled economies will seldom pay a premium to move cargo on the flag vessels of their trading partner. Obviously the costs of U.S. flag vessels are higher but we would question the wisdom of subsidizing U.S. flag liner vessels to serve controlled markets like China where competition does not exist and volumes can vary widely because of government policy.

SCOT opposes cargo reservation as a means of allocating cargo in any trade. Even when the U.S. had a ⅓,⅓,⅓ cargo sharing agreement it is our understanding the Chinese did not honor the commitment to move cargo on the U.S. flag vessels.

We have concentrated on the export trade as we have limited reports on importers experience. We do understand that the Chinese do try to control the freight by selling cif the U.S. port. Because it is difficult to control operations within China in movement to the port and because of the limited port facilities most importers find it practical to purchase delivered to the U.S. and the overall performance on delivery is satisfactory. In one instance the U.S. importer retained control of routing, but his instructions were often not honored and it was difficult to determine why.

In summary, while we would support a workable method to secure more U.S. flag liner service without subsidy or cargo reservation we are not sure that is practical with todays conditions in China. U.S. vessels will be most competitive at efficient, large volume ports. The ability to control connecting service might be a practical fist step to improve the short term position of the U.S. flag carriers.

Senator Breaux. Thank you very much for your presentation. I still want to hear from Mr. Haugen, and our former colleague, Congressman Howe.

But we are going to have to go back and vote and will return as soon as we finish.

Senator Stevens. I might add, Mr. Chairman, that there is a chance we are going to be over there for two votes and it will be quite some time before we can get back. If that happens I will be not be back and I am sorry about that, Mr. Haugen, but I have to keep going.

Senator Breaux. We will be in recess until we return.

[Recess.]

Senator Breaux. The subcommittee will come to order. Mr. Haugen, please proceed.

Mr. Haugen. Thank you. Alaska Marine Lines is wholely owned by Lynden, Incorporated, and operates a weekly scheduled tug and barge service offering common carriage between Seattle, Washington and Southeast Alaska, namely the points of Ketchikan, Wrangell, Petersburg, Sitka, Juneau, Haines and Skagway. The tugs and barges operated on this service are registered in the United States.

In May of 1985, Alaska Marine Lines was granted a waiver under the coasting trade exemption regulations to provide a weekly service for the transportation of goods between Vancouver and Whitehorse via Seattle and Haines, for the period commencing May 3, 1985, and terminating May 2, 1986. AML provided continuous weekly service between these points during this period.

On April 2, 1986, AML applied to the Minister of Revenue and the Water Transport Committee for a renewal of the one year waiver granted to it commencing May 3, 1985, to enable it to continue to move Canadian goods between British Columbia and the Yukon Territory.

During our presentation to the Water Transport Committee and to the Minister of National Revenue, AML supplied letters from the Yukon Government, the City of Whitehorse, the State of Alaska, as well as several other Canadian companies who supported our application.

Unfortunately, we were notified by Canadian Customs on June 10, 1986, that our application for renewal had been denied. The denial was based solely on the determination, "that suitable vessels of Canadian origin are available for the proposed duties."

Alaska Marine Lines had been providing this weekly cost effective service to the Yukon for the past year. Considerable costs have been expended to establish this service and to gain its acceptability by the people of the Yukon. Due to the denial of our request for a waiver, Alaska Marine Lines has been able to haul only goods of U.S. origin to the Yukon.

Since the time of the denial of AML's application, much effort has been expended to try to regain the waiver. We have attempted to appeal the denial of the waiver application through the Canadian Government to no avail.

After much analysis, we have concluded the only available option to us is to reapply to the Canadian Government with another application. We will be supporting our new application with letters of support from the effected customers who would benefit from a competitive shipping service, whether they are on the U.S. or Canadian side of the border.

We are also of the opinion that our reapplication, if treated in the same manner as was done one year ago, would not result in regaining this waiver. Our only hope in being successful with this application is to convince the Canadian Government of the merits of permitting a competitive shipping environment for the Yukon versus preservation of the Canadian ships only status quo.

That ends my formal presentation. I would be happy to answer any questions you might have.

Senator **Breaux**. Mr. Howe.

Mr. **Howe**. Thank you very much for allowing us the opportunity to appear before the subcommittee today. I am appearing on behalf of Mr. Mickey Arison, the President of Carnival Cruise Lines, who could not be here.

Carnival carries 10,000 passengers every week to Caribbean destinations on a fleet of six ships serving the southern and eastern Caribbean. While our major emphasis is in the Caribbean, we have one ship sailing from Los Angeles serving the Mexican coast. All of our ships operate on a year round basis and in 1986 carried 443,132 passengers. We project a total in 1987 of approximately 550,000 passengers.

As good citizens of the Miami area where Carnival is based and as an American-owned business by citizens of our nation, our company maintains a strong U.S. identification, although our operations are serving the Caribbean nations. Carnival is a strong supporter of the Caribbean Basin Initiative [CBI] which is an important part of the U.S. trade policy.

The Carnival Cruise Lines is a totally U.S. controlled company with all of the ownership in legal title of U.S. citizens. As is the case with all passenger vessels operating in the Caribbean area, and with nearly all other passenger vessels operating out of U.S. ports, our vessels are foreign built which effectively makes U.S. registry impractical.

Our vessels are registered in Panama and fly that flag. However, our major competitors are foreign corporations and are all foreign registered and foreign flagged. Since Carnival is one of the only operators of U.S. controlled passenger vessels in the United States, we are in the unique position to offer our ships to this country in cases of national emergency. Our vessels are included within the definition of the Effective U.S. Control fleet, commonly identified as EUSC. As you know, the EUSC is comprised of merchant and passenger vessels controlled by U.S. companies but registered in foreign countries such as Liberia, Panama, Honduras or the Bahamas, and by reason of the provisions of Section 902(a) of the Merchant Marine Act of 1936 are subject to requisition in time of war or national emergency, regardless of registry.

The Effective U.S. Control fleet has continued from its origin in the early days of World War II up to the present time. If it is feared, Mr. Chairman, that the friendly flag nations may change their law or policy and thus interfere with free exercise of U.S. law allowing requisition, use, or charter of the EUSC vessels, this subcommittee could recommend reasonable provisions to strengthen that control.

Carnival's passenger vessels, all seaworthy and meeting all safety standards, are ready today as part of the EUSC fleet. Should national emergencies require their use, such as the Government of Great Britain found in its conflict in the Falkland Islands, when it requisitioned the use of the Queen Elizabeth II to transport its troops on very short notice, Carnival's ships would be ready and available for similar service.

Since 1962, Mr. Chairman, the Congress has supported the concept of EUSC by its tax policy. In that year, Congress passed a provision to exempt from taxation certain shipping income according to the wording of the legislation, "primarily in the interest of national defense."

In 1974, a more limited deferral conditioned on the reinvestment of that income in shipping assets was adopted. That was the law until the 1986 tax legislation passed the Congress, and Congress, probably unknowingly, dealt a severe blow to national security and the continuation of the EUSC. The tax deferral under subpart F was repealed, but the real intensions of the Congress, frankly, are not clear. The House version called for the repeal. The Senate version did not. The Conference Committee never addressed the issue. It was presumably traded off for other issues in the conference, which had nothing to do with shipping interests.

While the U.S. owned companies and the national security interests of the United States are clearly the losers in this decision, the real tragedy is that there are conversely no winners in this result.

To illustrate the dilemma, Mr. Chairman, facing the U.S. owned companies, let me tell you what Carnival must now decide. First, we can try to continue to compete in the highly competitive market with foreign owned competition, but realizing that they do so with no tax responsibilities to the United States and probably little or none to the nations of their ownership and registry.

While Carnival, as a U.S. Company, would be struggling to maintain its ships out of after tax dollars, our foreign competitors would be free to maintain their ships with revenue which is tax free in the United States, and possibly worldwide. The other alternative is no more inviting, although it does solve the tax problem. That is the choice to transfer the majority ownership in Carnival to foreign interests. It obviously removes these vessels from the shrinking number of ships in the EUSC, and would remove tax revenues arising from U.S. ownership and employment. Neither result, however, is good for our national interests.

Out of approximately 300 vessels that are presently under U.S. control, which, of course, includes merchant and passenger vessels, which could be requisitioned, used, or chartered in a national emergency, only ten are passenger vessels. If this small cadre of passenger vessels are removed from the dwindling number of the EUSC fleet through foreign competition, aided and enhanced by U.S. tax policy, then the nation has severely disabled a policy which has been important, strategic and effective for many decades past.

I urge the subcommittee, Mr. Chairman, to carefully examine the repeal of subpart F as it relates to tax deferral of reinvested shipping income, and its effect on EUSC policy. The Conference Committee on the tax bill did not weigh the serious consequences of this action, but this subcommittee has the jurisdictional responsibility to start in motion movement which will rectify this error.

It is recognized that the policy recommendations of this subcommittee would be essential and critical in bringing about action through the Senate Finance Committee having jurisdiction over tax policy.

The purpose of this hearing is to focus on unfair practices which impede American business in competition with foreign interest. I applaud your diligence in examining these problems, but must observe that it is somewhat incongruous that while you are struggling to formulate sound answers to difficult questions of foreign competition, other policies of our government, and specifically erroneous tax policy, is actually forcing the flight of U.S. ownership of vessels engaged in U.S. trade and commerce into the very control of foreign competition.

Once lost, it will be virtually impossible to regain. This is done not only to the detriment of the American business, but in the case of the EUSC fleet, also to the detriment of important and strategic national security interests.

The simplist remedy, Mr. Chairman, would be to reinstate the previous IRS code provision, if not for all affected vessels, certainly for the very small number of passenger vessels which are U.S owned and U.S. controlled, and that is the scope of our request today.

For the subcommittee to do nothing, however, on this matter would be to abdicate its authority and jurisdiction over maritime policy, and particularly with regard to the Effective U.S. Control Fleet policy, to the whims of tax policy, motivated by reasons outside maritime interests.

Without appropriate action it is likely that one more segment of our economy would become an "unfair foreign competitor". Thank you for your consideration of these points, Mr. Chairman, and your kind attention to my testimony. I would be pleased to answer any questions.

Senator **Breaux**. I thank the panel for their testimony.

Mr. Haugen, give me some more information on your situation. I take it that you are saying that we have a provision that allows an exception to our Jones Act policy to circumstances, shipping from Canadian ports, and they do not allow us to have that same advantage in their coastal trade?

Mr. **Haugen**. That is correct, Mr. Chairman. There is a provision in the Jones Act called the third proviso, and as long as cargo is shipped via Canadian rail on one leg of the trip north to Alaska it allows a foreign bottom to be used on the water transport side.

Senator **Breaux**. Give me an example of that being implemented?

Mr. **Haugen**. Okay. If a Canadian shipper, for instance, was based in Vancouver, if he wanted to take U.S.-origin goods out of the lower 48 states, as we say in Alaska, anywhere in the continental United States, he could take them into Seattle, for instance, put them aboard a train, take them into Vancouver, and then run from Vancouver on the water with a foreign bottom and deliver those goods within Alaska.

The reverse is not true, however, due to the Canadian Shipping Act. We have to operate only under a waiver situation, which has been denied to us. We had it for one year and we are essentially a foreign bottom on the Canadian commerce side of the fence.

Senator **Breaux**. Have you ever thought about bringing this to the attention of the FMC, the Maritime Commission?

Mr. **Haugen**. We attempted to find out what would be the proper way to submit this, and I have had some discussions in the last several days with FMC about whether their rules would allow them to conduct an investigation or to look at this particular situation.

Senator **Breaux**. Your point is this is a type of statutorily provided trade restriction, that our country does not have the same practice of?

Mr. **Haugen**. That is our assessment of the situation. We have attempted to work with the Canadian government to see if there was a way for an appeal to be made or other attempts to try to change the situation. To date, those efforts have not been met with any success.

Senator **Breaux**. Senator Stevens is of course very concerned about this. He has spoken to me about it. I would suggest continued contacts with the FMC and see whether current rules and regulations apply.

And if they do not, I would think it would be something, at least in my opinion offhand, that should be the subject for investigation by the FMC. It is the type of practice that they are aiming at, that they are restricting our activities and we are not.

That is what we are talking about in this legislation.

Mr. **Haugen**. We will certainly do that, Mr. Chairman. And I appreciate having a chance to bring this case in front of you.

Senator **Breaux**. Mr. Howe, we are glad to have you before the committee. Is your client attempting to make the point that a U.S.-owned shipping operation, although foreign built and foreign crewed, is suffering an unfair trade practice that is perpetrated by other countries because of the type of treatment that they give their carriers in the cruise industry that is different from ours?

Mr. **Howe**. Well, essentially, Mr. Chairman, it really originates with our own tax policy. The U.S. tax policy has made that difference.

The company that we represent, Carnival Cruise Lines, is a U.S. company and is wholly U.S. owned. So it has a different identification in terms of its relationship to EUSC, than those foreign carriers which are not covered in that regard.

So we feel, in looking at it from the standpoint of the United States, it is unfair competition. It is unfair because the foreign competitors pay no U.S. taxes. They are not in the same position as the U.S. owned company that we represent.

Senator **Breaux**. Of course, I would take it that their ships, being non-U.S. owned, that are not subject to call in times of a national emergency by our government, even though they call on our ports and may do business in this country?

Mr. HOWE. Certainly, yes, that is correct. They are not subject to the Merchant Marine Act of 1936 and the provision that makes it possible to call on those U.S. owned companies that are included in the title Effective U.S. Control fleet.

They may pay some port fees, but probably pay no U.S. taxes and perhaps not elsewhere either.

Senator BREAUX. What of the provision before it was changed? What would it have allowed Carnival, your client, to do that they cannot do now because of the change?

Mr. HOWE. It allowed for the payment, Mr. Chairman, on new vessels and on maintaining present vessels, which goes to the very heart of the whole strength of the EUSC fleet. The tax on that money was deferred.

You want to have vessels that are maintained at no expense to the government, that are seaworthy and meet all safety standards, are ready to be used immediately if the government should have to call on them in times of national emergency.

The funds that are tax deferred go into those shipping assets. That is an absolute condition of the tax deferral. So when that is done, the vessels themselves are maintained in excellent condition.

And those payments that are made on the new vessels, of course, make it possible to refurbish and keep the fleet entirely up to date. Otherwise, in times of national emergency, the government will be faced with refurbishing older ships, taking them out of mothballs, or reaching from I do not know where, but trying to do something that would take a great deal more time than it would to use these that are already on line and being utilized.

Senator BREAUX. How important is the provision that used to be in the law? How important is that provision to determining the question of whether your company stays as a U.S.-owned company?

Mr. HOWE. Well, the tax advisers to our company have told them that the way to solve this problem, Mr. Chairman, is to go offshore, that is to sell the controlling interest of their company to a foreign interest.

They have resisted that because these are people that are U.S. citizens. They are not interested in doing that. They feel it is very unfair that they are forced to look at that as an alternative.

Of course, it goes without saying that if they do that it removes another number of vessels from the effective U.S. control fleet, which is dwindling, just as we have heard in other testimony here today. So that certainly is not in our national interest.

Senator BREAUX. How many vessels does the company you represent have?

Mr. HOWE. We actually have seven vessels deployed at the present time, Mr. Chairman. We have one vessel that is being constructed. So we effectively have eight. The eighth one is not quite on line.

Senator BREAUX. How many military personnel would they be capable of carrying if they were called into the national defense service?

Mr. HOWE. Well, that is a good question. I think the largest vessel that we have can carry about 1,800 passengers. That is the

Celebration, which is the newest of the Carnival fleet. Those ships, as we have found in previous experience, are capable of carrying troops with little or no refurbishing or changes for the military use.

Senator **Breaux**. So if you have eight vessels, but the rest of them would be smaller?

Mr. **Howe**. They would be smaller, Mr. Chairman. That is the largest of them. So their capacity would be a little bit less than that, but ranging, I would say, between 1,000 to 1,800 positions.

Senator **Breaux**. Per ship?

Mr. **Howe**. Yes, per ship.

There is another company that is U.S. owned that has two vessels. That is controlled by a U.S. corporation and they fall into this same category.

Senator **Breaux**. Let me ask you this question. Was this testimony presented to the Congress in the last session when this change was made?

Mr. **Howe**. The House of Representatives, Mr. Chairman, held no hearings. We tried to get hearings on this point before the House. That was impossible. And they did include the repeal provision for this section in the bill.

In the Senate, we had a little more time to get the story across to the Senators. It was a part of their hearing, and they decided not to include the provision in the Senate version.

When it went to the conference committee, it was still cloaked in a great deal of secrecy what did happen. But as we understand it from those that were there—and there were very few deciding this—it was just traded off, with no discussion at all to the merits of this issue, certainly not the maritime issue at all. That was never discussed.

So if it has an adverse effect, which we submit it does, to the EUSC policy, it certainly is timely to look at that, and of course realizing that there would have to be some subsequent review of the tax consequences by the Senate Finance Committee as well.

Senator **Breaux**. Was it done based on the fact that additional revenues were needed and so this tax incentive or tax deferral was eliminated based on that?

Mr. **Howe**. I think the House provision contemplated that, although this is a very minor matter, Mr. Chairman, in terms of tax revenues. And today I am appearing here on behalf of one client involving eight passenger vessels. As I have said, there are two others out there that fall in the same category.

If you looked at the ten passenger vessels that are U.S. owned, U.S. controlled, that would be a small part of what was estimated to be the cost of this last year in the Finance Committee and the Ways and Means Committee deliberation on the matter.

Senator **Breaux**. Do you think that your case—and I am asking this because what we have been looking at in these hearings are unfair trade practices. Do you think that a case can be made that the treatment that this U.S. company is receiving is an unfair trade practice, but it would be one that would be perpetrated by our own government as opposed to a foreign government?

Mr. **Howe**. Well, I think it can be termed that, Mr. Chairman, because it does relate to the treatment of foreign corporations by our own government, and we are in competition with those same companies. They are the competition that we face as a U.S. owned company.

So in that respect, it certainly falls into that category as an unfair trade practice.

Senator BREAUX. Mr. Miller, let me ask you. We talked earlier about the intermodal connections from a port to within the country, and apparently the case has been made that many countries prohibit intermodal transportation from the port to points in the interior of their country by U.S. operators.

Is that a problem from the standpoint of the shippers that you represent?

Mr. MILLER. We do not know that it is a problem of getting cargo delivered specifically. But certainly it puts the U.S. carriers at a disadvantage, and we want the U.S. carrier to have an equal crack at it.

The majority of the U.S. cargo now goes in containers, and an increasing amount is moving on intermodal rates. It is a tremendous advantage for a U.S. exporter to be able to have a single document that moves it to destination.

And from our standpoint, we are very anxious that our own carriers, who as Peter Finnerty said, invented intermodalism and invented or started the container movement, have an equal chance. So it certainly is important to us.

Senator BREAUX. What about the aspect of competition? Obviously, it would provide additional competition if they were allowed to compete in that trade.

Mr. MILLER. Precisely. And I think the ability to attract cargo with their own people to solicit backhaul cargoes becomes a very important part of their economics and important to our importers.

Senator BREAUX. John, we thank you for being with us, too. I did not ask you any questions, but we did that yesterday. We appreciate your support of Title I.

Gentlemen, we thank all of you for being with us. I think you have made some good points.

We are going to keep the record open for any comments, additions of any of our witnesses, I guess for about a week. We have scheduled a June 4 markup of the legislation, which is a quick, fast track process that we are trying to undergo.

So with that, I think the hearings have been good. I think they have made some points that I think need to be to support the legislation. We will now begin to do the work of making any additional changes prior to the markup, the markup being scheduled June the 4th.

We thank all of our participants, and with that the subcommittee will stand adjourned until further call of the chair.

[Whereupon, at 5:14 p.m., the subcommittee was adjourned.]

[The following information was subsequently received for the record:]

STATEMENT OF TALMAGE E. SIMPKINS, EXECUTIVE DIRECTOR, AFL-CIO MARITIME COMMITTEE

We endorse your efforts to restore some semblance of an American-flag merchant marine.

The fact that our merchant marine only carries 3 percent of our commercial waterborne commerce is proof, in our opinion, that our maritime industry is not receiving adequate protection in the marketplace. Title I of your bill, S. 1183, will extend a degree of help. The fact that your announced intentions are to add this part of the bill to the Trade Act means that it will receive early attention.

Title II of S. 1183 would also be extremely helpful. The primary features, as we understand them, would—

Eliminate the essential trade routes;

Make the awarding of ODS contracts by the Secretary of the Department of Transportation mandatory rather than discretionary;

Remove the restriction of ODS operators operating nonsubsidized service;

Permit foreign building for ODS operators; and

Remove the requirement that liner operators cannot use foreign-built ships in the carriage of preference cargoes unless they have under the U.S.-flag for three years.

We believe that these are necessary changes to the Merchant Marine Act, 1936.

Continuing the parity concept of the 1936 Act as the basis for the payment of ODS, in our opinion, makes sense.

We had hoped that a maritime program would have addressed the issue of cargo such as in the adoption of a national cargo policy that would spell out in precise terms the minimum amount of cargo to be carried on U.S.-flag ships. This is not intended as a criticism because your program is most desirable and it appears it may have gotten the Administration moving on its long-awaited program.

During the hearings you heard from a witness representing foreign-flag interests asking for help in restoring a tax loophole they enjoyed prior to the tax rewrite of 1986.

The tax code rewrite of 1986 does not discriminate against them in any way. Under the new tax code, American-flag operators doing business in the states pay taxes as do foreign-flag "runaways" doing business in the United States whose country of registry does not have a tax treaty with the United States. The operators who register their ships in their own country pay taxes there. Prior to the new law, this operator—Carnival Cruise Lines—even though he did 100 percent of his business in the states, did not pay taxes anywhere.

Contrary to the testimony presented by Carnival Cruise Lines, its vessels are not requisitional as per Section 902 (a) of the 1936 Act because its vessels, in our opinion and others, do not meet the criteria as "owned by citizens of the United States" as per Section 905 (c).

International Organization of
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ROBERT J. LOWEN
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LLOYD M. MARTIN
International Secretary-Treasurer

May 26, 1987

The Honorable John Breaux, Chairman
Subcommittee on Merchant Marina
Committee on Commerce, Science and Transportation
425 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I regret that I was unable to personally appear before the Subcommittee to present the views of the Masters, Mates and Pilots on S. 1183. I would, however, like to have the comments contained herein included in the Subcommittee's hearing record.

As you have indicated, Mr. Chairman, the precipitous decline of the U.S. merchant marine will have severe consequences for the military and economic security of our nation. The continuing decline is due in part to the inadequacies of existing U.S. maritime policies -- they have not kept pace with changes in international trade or in the maritime industry itself. Our policy framework must be revised if we are to properly address the problems facing the industry today and to reverse the sagging fortunes of the U.S. fleet. The introduction of S. 1183 attempts to address some of the problems and to ensure the competitive viability of the U.S. merchant marine.

Mr. Chairman, you are right on target when you say the millions of dollars we spend on the Ready Reserve Fleet may be better spent on promoting the viability of an active fleet and maintaining a pool of qualified seafaring personnel. In my recent statement to the Commission on Merchant Marine and Defense I took the position that the current RRF system, especially in view of its projected growth, is totally contrary to realistic defense readiness. It makes no sense whatsoever to be spending admittedly scarce Federal funds to acquire and maintain a reserve fleet for which we will not likely have an adequate supply of trained and qualified merchant mariners. As you have pointed out, not only does the promotion of an active fleet make more sense from a defense perspective, it makes more sense from a fiscal perspective as well. An active merchant fleet pays taxes and employs workers who pay taxes. Mothballed ships do not!

Ironically, the current Ready Reserve Fleet program is doing as much as anything else to deplete the available trained manpower pool and to actually decrease our defense readiness. In the past, when the Maritime Administration took a vessel for the RRF, it entered into a General Agency Agreement with the previous operator of the vessel. This operator had an established source and supply of trained seafaring personnel -- personnel who had sailed aboard the vessel, were familiar with it, and could put it into operation very quickly when our country said it was necessary. Now, however, the RRF process actually divorces the ship from the personnel. No longer are the previous operator and its manpower pool linked to the vessel in the RRF, ever-prepared to break the ship out and put it into operation. This current system, especially in view of the projected growth of the RRF, is totally contrary to realistic defense planning.

Mr. Chairman, I would like to first address Title II of the bill which revises the Operating Differential Subsidy program in order to make it available to all U.S.-flag liner operators. The MM&P has consistently supported efforts like yours to reform the current system which will result in a stronger, healthier U.S.-flag merchant fleet and which increases job opportunities for U.S. merchant seamen. We are pleased S. 1183 does not contain any provision which would directly or indirectly promote the growth of foreign flag shipping and foreign rather than American shipboard jobs.

With respect to S. 1183, we strongly support that provision which directs the Secretary of Transportation to enter into ODS contracts with any qualified applicant. The operative word here is, of course, directs. Applicants who satisfy the eligibility requirements of the Act cannot be rejected under S. 1183. The need for such provision is obvious when one looks at the present Administration's lack of enthusiasm for ODS. Without this provision all other changes are insignificant.

With regard to eligibility of foreign constructed vessels for ODS, the MM&P supports this provision. However, this section should apply only to existing foreign built tonnage owned by U.S. liner companies and to any newly constructed vessels. We also agree that these vessels should be permitted to carry preference cargoes without having to wait for three years.

The MM&P also agrees that subsidy reform should include the elimination of outmoded regulatory and administrative burdens. To this end, S. 1183 will free ODS operators from limitations and restrictions on providing unsubsidized service with U.S.-flag vessels in the international trade. Additionally, the bill eliminates essential trade routes, although section 605(c) is left intact as a protection for smaller operators. We understand, however, that there is much dissatisfaction with the administration of section 605(c) and desire for its reform. We would not oppose meaningful reform of this section.

In past incarnations of subsidy reform the issue of foreign-flag feeder vessels has been of paramount importance to the MM&P and others in maritime labor. S.1183 makes no specific reference to foreign feeders. Currently Marad, under section 804 of the Merchant Marine Act, may authorize foreign-flag feeder services where needed. We endorse the status quo in this area.

One final and important comment. In prepared testimony on S. 1183 the Maritime Administrator stated that S. 1183 "should provide incentives that will generate reductions in the levels and costs of subsidized manning." We recognize that labor has an important role in the effort to revitalize our industry. We have assumed and will continue to assume our fair share of the burden. The Maritime Administrator's position totally ignores labor's repeated concessions on wages, fringe benefits, and manning scales. Time and again, the MM&P has agreed to new and amended contracts that reflect the economic realities in the shipping industry as well as our commitment to do what we can to ensure the continuation of the U.S. merchant marine. Overall, MM&P members sailing on U.S.-flag vessels as professional ship officers have incurred between 20% and 40% reduction in their pay and benefits. We will vigorously oppose any language in subsidy reform legislation which interjects the Federal government into the collective bargaining process. It is unnecessary, as evidenced by recent collective bargaining agreements, and it runs counter to the traditions of American labor law.

With regard to Title I of the bill, we support this legislative proposal to provide additional tools to deal with the unfair trading practices of other maritime nations. We agree with you that existing section 19 of the Shipping Act has not been particularly effective in combating these unfair practices. We believe this legislation is good legislation and would make an appropriate section of the developing Senate trade bill.

In conclusion, we commend you for introduction of S. 1183 and your sincere desire to revitalize the American merchant marine. We stand ready to assist you and your staff in this important effort.

Sincerely,

Captain Robert J. Lowen
International President

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